



California Regulatory Notice Register

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by Thomson West.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by sections 82011, 87303, and 87304 of the Government Code to review proposed conflict of interest codes, will review the amended conflict of interest codes of the following agencies:

CONFLICT OF INTEREST CODE

AMENDMENT

STATE AGENCY: California State University and State Water Resources Control Board.

A written comment period has been established commencing on **September 1, 2006**, and closing on **October 16, 2006**. Written comments should be directed to Adrienne Korchmaros, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed amendment to the conflict of interest code will be submitted to the Commission's Executive Director for review, unless any interested person, or his or her duly authorized representative, requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed amendment will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced amendment to the conflict of interest code, proposed pursuant to Government Code section 87300, which designates, pursuant to Government Code section 87302, employees who must disclose certain investments, interests in real property, and income.

The Executive Director or the Commission, upon his or her own motion or at the interest of any interested person, will approve, or revise and approve, or return the amendment to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments, or comments, in writing to the Executive Director of the Commission, relative to review of the proposed amendment to the conflict of interest code. Any written comments must be received no later than **October 16, 2006**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses, or small businesses.

AUTHORITY

Government Code sections 82011, 87303, and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest code shall approve codes as submitted, revise the proposed code, and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Adrienne Korchmaros, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended Section 3591.6, sub-

section (a), of the regulations in Title 3 of the California Code of Regulations pertaining to Gypsy Moth Eradication Area as an emergency action that was effective on July 5, 2006. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than November 29, 2006.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before October 16, 2006.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this state and determine the probability of its spread, and the feasibility of its control or eradication ((Food and Agricultural Code Section 5321).

Existing law also provides that the Secretary may establish, maintain, and enforce quarantine, eradication, and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (Food and Agricultural Code, Sections 401, 403, 407 and 5322). Existing law also provides that eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, its hosts, and the methods to be used to eradicate said pest (Food and Agricultural Code Section 5761).

Section 3591.6, subsection (a), was amended and established San Mateo County as an eradication area for gypsy moth, *Lymantria dispar*. The effect of this action was to establish authority for the State to conduct eradication activities in San Mateo County against this pest. There is no existing, comparable federal regulation or statute.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that Section 3591.6 does not impose a mandate on local agencies or school districts and no reimbursement is required for Section 3591.6 under Section 17561 of the Government Code. The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed actions will not affect housing costs.

EFFECT ON BUSINESSES

The Department has made an initial determination that the proposed actions will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACT ON AFFECTED PRIVATE PERSON OR BUSINESSES

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT

The Department has made an assessment that the proposed adoption and amendment to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

ALTERNATIVES CONSIDERED

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be

more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

AUTHORITY

The Department proposes to amend Section 3591.6, subsection (a), pursuant to the authority vested by Sections 407 and 5322 of the Food and Agricultural Code.

REFERENCE

The Department proposes to amend Section 3591.6, subsection (a), to implement, interpret and make specific Sections 407, 5322, 5761, 5762 and 5763 of the Food and Agricultural Code.

EFFECT ON SMALL BUSINESS

The proposed amendment of this regulation may affect small businesses.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed to is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Liz Johnson at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website (www.cdfa.ca.gov/cdfa.pendingregs).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed actions, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The loca-

tion of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations amended by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of amendment. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended Section 3700(c) of the regulations in Title 3 of the California Code of Regulations pertaining to Oak Mortality Disease Control as an emergency action on August 1, 2006. The Department proposes to continue the regulation as amended and submit a Certificate of Compliance for this action to the Office of Administrative Law no later than November 23, 2006.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department contact no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture may certify that there was compliance with the provisions of Section 11346.1 of the Government Code within 120 days of the emergency regulation.

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before October 16, 2006.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry in California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law also provides that the Secretary may establish, maintain, and enforce such regulations as he deems necessary to prevent the spread of pests to protect California's agricultural industry (Food and Agricultural Code, Section 5322).

The emergency amendment of Section 3700(c), Oak Mortality Disease Control, established *Fagus sylvatica*

(European beech), *Kalmia latifolia* (mountain laurel), *Quercus cerris* (European turkey oak), *Salix caepea* (goat willow) and *Viburnum* (all species) as hosts under the articles and commodities covered by the regulation. The emergency amendment of Section 3700(c) also established *Ceanothus thyrsiflorus* (blue blossom), *Cinnamomum camphora* (camphor tree), *Kalmia angustifolia* (sheep laurel), *Nerium oleander* (oleander), *Osmanthus fragrans* (sweet olive), *Osmanthus heterophyllus* (holly olive) and *Quercus acuta* (Japanese evergreen oak) as associated articles under the articles and commodities covered by the regulation.

The effect of the changes to the regulation is to provide authority for the State to regulate movement of these new hosts and “associated hosts” and potential carriers of disease from the regulated area to prevent artificial spread of the pest to non-infested areas to protect California’s agricultural industry and the environment.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that the amendment of Section 3700(c) does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under regulation has a duty to enforce Section 3700. No reimbursement is required for Section 3700 under Section 17561 of the Government Code because the agricultural commissioners of the affected counties requested the change in the regulation.

The Department also has determined that the amended regulation will involve no additional costs or savings to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will not affect housing costs.

EFFECT ON BUSINESSES

The Department has made an initial determination that the proposed action will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The cost impact of amending the regulation on a representative private person or business is not expected to be significantly adverse. The agency is not aware of any new cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT

The Department has made an assessment that the proposed amendment to the regulation would not (1) create or eliminate jobs within California, (2) create new businesses or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

ALTERNATIVES CONSIDERED

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY

The Department amended Section 3700(c) pursuant to the authority vested by Sections 407, 5321 and 5322 of the Food and Agricultural Code of California.

REFERENCE

The Department amended Section 3700(c) to implement, interpret and make specific Sections 24.5, 5321 and 5322, Food and Agricultural Code; Sections 11425.50 and 11440.10, Government Code; and Section 1084 *et seq.*, Code of Civil Procedure.

EFFECT ON SMALL BUSINESSES

The amendment of this regulation may affect small businesses.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed action, location of the rulemaking file, request for a public hearing, and final statement of reasons may be

directed is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Liz Johnson at (916) 654-1017. Questions regarding the substance of the proposed regulations should be directed to Stephen S. Brown.

INTERNET ACCESS

The Department has posted on its Internet website (www.cdfa.ca.gov/plant/index.html) the information regarding this proposed regulatory action. Select "Proposed Changes in Regulations for Plant Health and Pest Prevention Services" and then section number(s).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations adopted by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

TITLE 4. CALIFORNIA HORSE RACING BOARD

NOTICE OF PROPOSAL TO ADD RULE 1689.2. SAFETY REINS REQUIRED

The California Horse Racing Board (Board) proposes to add the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to add Rule 1689.2, Safety Reins Required. The proposed addition of Rule 1689.2 would provide that no jockey or apprentice jockey shall ride in a race, nor shall any person be mounted in or riding on a sulky, or exercise, gallop, breeze, work out or ride a horse on the grounds of a facility under the jurisdiction of the Board unless the horse is equipped with safety reins.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, October 26, 2006**, or as soon after that as business before the Board will permit, at the **Arcadia City Hall, 240 West Huntington Drive, Arcadia, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m., on October 16, 2006**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 263-6397
Fax: (916) 263-6042
E-mail: harolda@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19440 and 19504, Business and Professions (B&P) Code. Reference: Section 19504, B&P Code.

B&P Code Sections 19440 and 19504 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific Section 19504 B&P Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

B&P Code Section 19440 provides that the Board shall have all powers necessary and proper to enable it

to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include, but not be limited to, adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. B&P Code Section 19504 states should the Board determine that the use of safety reins would provide greater protection for jockeys and exercise riders than conventional reins, it shall adopt a regulation mandating the use of approved safety reins whenever a racehorse is ridden at a racetrack. The regulation adopted by the Board may phase in the use of safety reins, but the Board shall not permit the use of conventional reins in a pari-mutuel race for longer than 18 months following the adoption of the regulation.

Assembly Bill (AB) 1180, Statutes of 2005, added B&P Code Section 19504, which requires the Board to determine if the use of safety reins should be mandated. The proposed addition of Rule 1689.2, Safety Reins, will bring the Board into compliance with the provisions of B&P Code Section 19504, by requiring the use of safety reins on horses ridden, exercised, galloped, breezed or worked out on the grounds of a facility under the jurisdiction of the Board. A safety rein is a rein within a rein. Typical reins are made of leather or nylon. They attach to the ring above the bit, and provide jockeys and drivers with control of the horse. When reins break, control is lost. With safety reins, a wire or nylon cord is stitched into the traditional leather or nylon reins during the manufacturing process, and the safety cord is attached to the bit with a metal clasp. Should the outer leather or nylon reins break during a workout or race, the jockey or driver should be able to maintain control using the safety cord. When considering the addition of Rule 1689.2, the Board determined that a phase in period of 18 months would allow trainers time to replace conventional reins with safety reins, and cause less of a financial burden, as conventional reins have a useful life of roughly 24 months at the racetrack. Trainers could replace conventional reins with safety reins as needed over the 18-month period.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Section 17500 through 17630: none.

Other non-discretionary costs or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed amendment of Rule 1689.2 will not have a

significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

Cost impact on representative private persons or businesses: The Board has determined that a representative private person or business would incur an additional cost of between \$10 and \$15 dollars per set of safety reins, over the cost of a set of conventional reins, in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment of Rule 1689.2 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposal to amend Rule 1689.2 does not affect small businesses because horse racing is not a small business under Government Code Section 11342.610.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
E-mail: harolda@chrb.ca.gov

If the person named above is not available, interested parties may contact:

Jacqueline Wagner, Manager
Policy and Regulation Unit
Telephone: (916) 263-6041

AVAILABILITY OF INITIAL STATEMENT
OF REASONS AND TEXT OF
PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternative contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulation. Requests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed text of the regulation and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.

**TITLE 4. CALIFORNIA HORSE
RACING BOARD**

**NOTICE OF PROPOSAL TO AMEND
RULE 1689.1 SAFETY VEST REQUIRED**

The California Horse Racing Board (Board) proposes to amend the regulation described below after

considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1689.1. Safety Vest Required. The proposed amendment would update the current British Equestrian Trade Association (BETA) level 5 standard to the revised BETA level 1 standard. The proposed amendment would also provide that a safety vest may meet the American Society for Testing Materials (ASTM) standard F1937-4, which is the equivalent of the BETA 1 standard.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, October 26, 2006**, or as on after that as business before the Board will permit, at the **Arcadia City Hall, 240 West Huntington Drive, Arcadia, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m., on October 16, 2006**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 263-6397
Fax: (916) 263-6022
E-Mail: harolda@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19420, 19481 and 19562, Business and Professions (B&P) Code. Reference: Section 19481, B&P Code.

B&P Code Sections 19420, 19481 and 19562 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific Section 19481, B&P Code.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

B&P Code Section 19420 states jurisdiction and supervision over meetings in California where horse races with wagering on their results are held, and over all persons or things having to do with the operation of such meetings, is vested in the Board. B&P Section 19481 provides that in performing its responsibilities the Board shall establish safety standards governing the equipment for horse and rider to improve the safety of horses, riders and workers at the racetrack. B&P Code Section 19562 states the Board may prescribe rules, regulations and conditions under which all horse races with wagering on their results shall be conducted in California.

The BETA standards have been revised. Originally, the BETA standard was a two-tired level of shock absorbency on a scale of 10. Board Rule 1689.1 currently provides that safety vests worn on the grounds of a racing association or racing fair shall provide a minimum of shock absorbing protection to the upper body, as evidenced by a label indicating the safety vest meets a BETA five rating. The revised BETA standard for Horse Riders Body and Shoulder Protectors provides three levels of protection. The Level 1 black label is designed for use by licensed jockeys while racing. The proposed amendment to Rule 1689.1 updates the current BETA level 5 standard to the revised BETA level 1 standard. In addition, at the request of the Jockey's Guild, the proposed amendment to Rule 1689.1 also provides that a safety vest may meet the ASTM F1937-4 standard, which is the equivalent of the BETA 1 standard.

**DISCLOSURE REGARDING THE
PROPOSED ACTION**

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Section 17500 through 17630: none.

Other non-discretionary costs or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed amendment of Rule 1689.1 will not have a significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would

necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment of Rule 1689.1 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposal to amend Rule 1689.1 does not affect small businesses because horse racing is not a small business under Government Code Section 11342.610.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
E-Mail: harolda@chrb.ca.gov

If the person named above is not available, interested parties may contact:

Jacqueline Wagner, Manager
Policy and Regulation Unit
Telephone: (916) 263-6041

**AVAILABILITY OF INITIAL STATEMENT
OF REASONS AND TEXT OF
PROPOSED REGULATION**

The Board will have the entire rulemaking file available for inspection and copying throughout the rule-

making process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternative contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulation. Requests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed text of the regulation and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.

TITLE 4. CALIFORNIA HORSE RACING BOARD

NOTICE OF PROPOSAL TO AMEND RULE 1536. STEWARDS' MINUTES

The California Horse Racing Board (Board) proposes to amend the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1536, Stewards' Minutes. The proposed amendment would require the board of stewards to investigate and prepare a report regarding all on-track accidents involving jockeys or drivers that occur during the performance of their duties. The investigation shall commence no later than the next live racing day and shall be completed expeditiously. Upon completion of the report it shall immediately be distributed to the Jockeys Guild or the California Harness Horsemen's Association, the jockey or driver, the racing association, and the owner and the trainer of the horse the jockey or driver was riding or driving at the time of the accident. In addition, a copy of the report shall be attached to the stewards' minutes.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, October 26, 2006**, or as soon after that as business before the Board will permit, at the **Arcadia City Hall, 240 West Huntington Drive, Arcadia, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m., on October 16, 2006**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 263-6397
Fax: (916) 263-6042
E-mail: harolda@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19420, 19440 and 19481.3(e), Business and Professions (B&P) Code. Reference: Section 19432, 19440 and 19481.3(e), B&P Code.

B&P Code Sections 19420, 19440 and 19481.3(e) authorize the Board to adopt the proposed regulation,

which would implement, interpret or make specific Section 19432, 19440 and 19481.3(e), B&P Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

B&P Code Section 19420 states jurisdiction and supervision over meetings in California where horse races with wagering on their results are held, and over all persons or things having to do with the operation of such meetings, is vested in the Board. B&P Section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include, but not be limited to, adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. B&P Code Section 19481.3(e) provides that the stewards shall investigate and prepare a report with respect to all on-track accidents involving jockeys that occur during the performance of their duties. The report shall, at a minimum, identify the circumstances of the accident, the likely causes, and the extent of any injuries. Assembly Bill (AB) 1180, Statutes of 2005, added B&P Code Section 19481.3(e). The proposed amendment to Rule 1536 will bring the Board into compliance with the provisions of B&P Code Section 19481.3(e), by adding subparagraph 1536(b) to require that a report of all on-track accidents involving jockeys or drivers shall be forwarded to the Board as an attachment to the stewards' minutes. The accident report shall be made on form Jockey/Driver Accident Report CHRB-201 (New 07/06), which is incorporated into the regulation by reference. The Jockey/Driver Accident Report requires the names of the jockey or driver; the horse; the owner and the trainer. In addition, the date, time and location of the accident, and a description of the accident are required. The stewards must provide the circumstances of the accident, the likely causes and the extent of injury to the jockey or driver, if any. Besides attaching the Jockey/Driver Accident Report to the stewards' minutes, the report is also distributed to the jockey or driver; his representative; the Jockey Guild or the California Harness Horsemen's Association; the horse owner and the trainer of the horse the jockey or driver was riding or driving at the time of the accident.

While B&P Code Section 19481.3(e) does not mention harness drivers, the Board determined that stewards should also conduct investigations and prepare reports regarding accidents involving harness drivers.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Section 17500 through 17630: none.

Other non-discretionary costs or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed amendment of Rule 1536 will not have a significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment of Rule 1536 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposal to amend Rule 1536 does not affect small businesses because horse racing is not a small business under Government Code Section 11342.610.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
E-mail: harolda@chrb.ca.gov

If the person named above is not available, interested parties may contact:

Jacqueline Wagner, Manager
Policy and Regulation Unit
Telephone: (916) 263-6041

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternative contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulation. Requests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the no-

tice, the proposed text of the regulation and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.

TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD AND NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On October 19, 2006, at 10:00 a.m. in the Auditorium of the Harris State Building, 1515 Clay Street, Oakland, California 94612.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On October 19, 2006, following the Public Meeting in the Auditorium of the Harris State Building, 1515 Clay Street, Oakland, California 94612.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On October 19, 2006, following the Public Hearing in the Auditorium of the Harris State Building, 1515 Clay Street, Oakland, California 94612.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE

Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication

and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS
BY THE OCCUPATIONAL SAFETY AND
HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, General Industry Safety Orders and Ship Building, Ship Repairing and Ship Breaking Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **October 19, 2006**.

1. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 10
Section 3385
Update of National Consensus Standard Reference for Protective Footwear
2. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 98
Section 5004
Chapter 4, Subchapter 7, Article 101
Section 5047
SHIP BUILDING, SHIP REPAIRING AND SHIP BREAKING SAFETY ORDERS
Chapter 4, Subchapter 18, Article 6

Section 8379

Use of Personnel Suspended Platforms from Crane or Derrick

A description of the proposed changes are as follows:

1. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 10
Section 3385
Update of National Consensus Standard Reference for Protective Footwear

INFORMATIVE DIGEST OF PROPOSED
ACTION/POLICY STATEMENT OVERVIEW

Existing GISO Section 3385 contains requirements for foot protection and stipulates that appropriate foot protection shall be worn when employees are exposed to various foot hazards and prohibits the use of defective or inappropriate footwear. This section also requires that protective footwear meet the design, construction and testing requirements of the American National Standard Institute (ANSI) Z41 standards.

The ANSI Z41 Committee on Personal Protection-Protective Footwear, which developed the currently referenced standard in Section 3385, merged with American Society of Testing Materials International's (ASTM) Committee F13 on Safety and Traction for Footwear. This merger dissolved Z41 as an ANSI Committee and designated the ASTM Committee F13 on Pedestrian/Walkway Safety and Footwear to undertake the oversight and redrafting of the ANSI Z41 performance requirements and test method on personal protection on protective footwear. In April 2005, the 1999 version of the Z41 standard was withdrawn as ASTM announced two new replacement ASTM standards, F 2412-05, Standard Test Methods for Foot Protection, and F 2413-05, Standard Specification for Performance Requirements for Foot Protection. As a result, the new protective footwear purchased by employers and employees conflict with the existing Section 3385, as the referenced ANSI Z41 standard no longer exists, and footwear is no longer labeled to be in compliance with ANSI Z41, as they are labeled to be in compliance with the two proposed referenced ASTM standards.

The ASTM F 2412 and F 2413 continue to use safety and performance criteria previously provided in the ANSI Z41 and help protect against toe, metatarsal, and foot bottom injuries. The new ASTM standards also include test methods and performance requirements for footwear providing electric shock resistance, conductive and static dissipative and dielectric properties, as well as chain saw protection. The new ASTM F 2412-05 standard contains minimal changes from the

withdrawn ANSI Z41 1999 standard (the most current version) with regard to test methodology. The new ASTM F 2413-05 standard proposed for inclusion in Section 3385 is enhanced with expanded information on upper class 50 and class 75 toe protection performance requirements. The major performance characteristic changes between the new ASTM standards and the old ANSI standard are the removal of Type II for Static Dissipative and Class 30 for Impact and Compression requirements. Protective footwear manufacturers manufacture and test their products to the ASTM standards and have begun to label them as such.

Federal OSHA's comparable standards contained in 29CFR 1910.136, reference an outdated ANSI Z41-1967 standard which is no longer available from ANSI to the general public. Alternatively, the federal standard at 29CFR 1910.136(b)(1) allows employers to utilize protective footwear that is proven equally effective by the employer; an alternative practice that is not permitted in California.

The proposal also updates the existing ANSI Z41-1967 standard referenced in subsection (c)(2) to the 1999 edition, permitting the continued use of ANSI Z41.1-1999 protective footwear purchased prior to the effective date of the proposal, meeting the ANSI Z41 standard, or footwear meeting the requirements of the new ASTM standards. As previously noted, the 1967 ANSI standard is no longer available. In addition, since employers typically call for the replacement of protective footwear at least once a year, updating the reference is reasonable.

The following actions are proposed:

Section 3385. Foot Protection.

Existing Section 3385 consists of three subsections which contain requirements for foot protection and stipulates that appropriate foot protection shall be worn when employees are exposed to various foot hazards and prohibits the use of defective or inappropriate footwear. This section also requires that protective footwear purchased after January 12, 1995, meet the design, construction and testing requirements of the American National Standard Institute (ANSI) Z41-1991 standards and that protective footwear purchased on or before January 12, 1995, meet the requirements of the ANSI Z41-1967 standard.

Amendments are proposed to subsection (c)(1) to require protective footwear purchased after the effective date of the proposal¹ to meet the requirements and specifications of the ASTM F 2412 and the ASTM F 2413, 2005 standards. Amendments are proposed for subsec-

tion (c)(2) to delete the outdated Z41.1-1967 edition and require protective footwear purchased on or before the effective date of the proposal to meet either the ANSI Z41.1-1999 standard or the ASTM F 2412 and 2413, 2005 standards.

The proposed amendments will clarify to the employer the performance and testing standards to which protective footwear is currently manufactured, and what standards protective footwear is to comply with depending on whether it was purchased before or after the effective date of the proposed amendments. The proposal would continue to permit the use of protective footwear designed, built and tested in accordance with the ANSI Z41.1-1999 standard. Since the 1967 standard is no longer in print it is not possible to specify the differences between the two standards other than to say that it is reasonable to expect that there are notable differences between the outdated ANSI Z41-1967 standard and the two new ASTM standards proposed here.

DOCUMENTS INCORPORATED
BY REFERENCE

1. American National Standard Institute (ANSI), Z41-1999, American National Standard for Personal Protection-Protective Footwear.
2. American Society for Testing of Materials (ASTM), Designation F 2412-05, Standard Test Methods for Foot Protection, Copyright ASTM International, 100 Bar Harbor Drive, P.O. Box C700, West Conshohocken, PA.
3. ASTM, Designation F 2413-05, Standard Specification for Performance Requirements for Foot Protection, Copyright ASTM International, 100 Bar Harbor Drive, P.O. Box C700, West Conshohocken, PA.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessari-

¹ Upon review and approval of the proposed amendments, the California Office of Administrative Law will insert the effective date of the standard.

ly incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7. Furthermore (commencing with Section 17500 of Division 4 of the Government Code), because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal, this standard does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local governments. All employers—state, local and private—will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to the standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the auction is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

2. **TITLE 8: GENERAL INDUSTRY SAFETY ORDERS**

Chapter 4, Subchapter 7, Article 98
Section 5004

Chapter 4, Subchapter 7, Article 101
Section 5047

SHIP BUILDING, SHIP REPAIRING AND SHIP BREAKING SAFETY ORDERS

Chapter 4, Subchapter 18, Article 6
Section 8379

Use of Personnel Suspended Platforms from Crane or Derrick

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking proposal is the result of a Division of Occupational Safety and Health (Division) Request for New, or Change In Existing Safety Order (Form 9–040), in which the Division proposes amendments to General Industry Safety Orders (GISO), Sections 5004 and 5047 and Section 8397 of the Ship Building, Ship Repairing and Ship Breaking Safety Orders (SSSSO) with regard to the use of fiber rope or synthetic web slings.

The Division’s proposal is based on the American National Standards Institute (ANSI) and the American Society of Mechanical Engineers (ASME) standard. ANSI/ASME B30.23–1998 Safety Standard for Cableways, Cranes, Derricks, Hoists, Hooks, Jacks and Slings Personnel Lifting Systems prohibits the use of

synthetic webbing, natural, or synthetic fiber rope slings. The ANSI/ASME B30.23 standard represents an industry consensus and an engineering standard.

These effect of the proposed standards is to clarify what material is acceptable (wire rope) for the use of personnel suspended platforms from crane or derrick, and what materials are not allowed (natural or synthetic fiber rope slings). This proposal would ensure that employers use acceptable material for personnel suspended platforms.

Damage to fiber rope and synthetic web slings cannot always be determined through visual inspection by a qualified person as required by existing Title 8 rigging standards and manufacturer's recommendations. The inability to detect damage before the sling is placed in service could result in catastrophic failure that could result in serious employee injury or a fatality. Because fiber rope and synthetic webbing is damaged by heat, flame, corrosive materials and abrasion, it can be hazardous to use them with personnel platforms intended to suspend employees and equipment, which may include welding and sandblasting equipment.

Board staff contacted a leading manufacturer of suspended personnel work platforms and man baskets and a leading manufacturer of synthetic web slings, fiber and wire rope. The manufacturers' representatives indicated they support the proposed amendments and stated that synthetic web slings and fiber rope should never be used to suspend personnel platforms because they are easily cut and have poor abrasion resistance when compared to wire rope and steel chain. In addition, acids, caustics and ultraviolet rays from the sun damage synthetic slings. Moisture and temperatures above 194° F will weaken synthetic slings and fiber rope leading to catastrophic failure. The temperature can achieve this level when using various torches. This is corroborated by information from the Canadian Centre for Occupational Health and Safety stating the same and cautioning employers to select slings and suspending means made of the right material for the job. The suspended work platform representative stated that his company's personnel platforms are designed to accept only 1/2 inch, 5/8 inch or 3/4 inch diameter wire rope, not synthetic web slings or fiber rope. The web sling fiber and rope representative stated that his company does not provide synthetic web slings or fiber rope for use with personnel platforms.

The proposed amendments are as follows:

Section 5004. Crane or Derrick Suspended Personnel Platforms.

This section pertains to the design, construction, testing, use and maintenance of personnel platforms and the hoisting of personnel platforms on load lines of cranes and derricks.

Subsection (d) contains requirements addressing operational requirements including but not limited to the methods and manner for hoisting employees on platforms, use of load lines, strength requirements of load lines, use of load and boom hoist drum brakes, swing brakes and locking devices, crane stability, and rated platform load capacity.

A new paragraph (7) is proposed which would specify the use of wire rope as the only acceptable material to suspend personnel platforms.

Since the fiber rope sling prohibition is already consistent with standard industry practice, national consensus standards and platform manufacturer's recommendations, the proposal would have no effect on most employer operations, but only in isolated incidences such as when synthetic web slings or fiber rope is the quickest and easiest immediate alternative.

Section 5047. Natural and Synthetic Fiber Rope Slings.

This section pertains to sling use, safe operating temperatures, splicing, end attachments, removal from service and repairs of natural and synthetic and fiber rope slings.

Subsection (a) pertains specifically to fiber rope sling use, specifically rope made from three-strand construction, rope diameters, and use in accordance with manufacturer's recommendations. A new paragraph (4) is proposed that prohibits the use of natural and synthetic fiber rope slings for suspending personnel platforms.

The effect of the proposed amendment would be to inform employers of the prohibition of using natural and synthetic fiber rope slings for suspending personnel platforms. Since the fiber rope sling prohibition is already consistent with standard industry practice, national consensus standards and platform manufacturer's recommendations, the proposal would have no effect on most employer operations, but only in isolated incidences such as when synthetic web slings or fiber rope is the quickest and easiest immediate alternative.

Section 8379. Slings and Pendants

This section pertains to the use of slings and pendants at shipyards and requires all slings and pendants to comply with GISO Articles 96 and 101 and addresses visual inspections, use of spreaders and strongbacks, use of wire rope slings, cradling materials in slings, use of thimbles, and securing the loose ends of slings and pendants.

Subsection (e) specifically addresses the use of wire rope slings and pendants when handling plates or material on and off boats under construction. This section permits the use of fiber rope to handle materials that would be damaged by wire rope such as lumber, lumber products, small bundles of pipe and materials subject to such damage.

An amendment is proposed to add language in subsection (e) pertaining to lifting personnel in personnel platforms to specify that wire rope slings and/or pendants be used.

The effect of the proposed amendment would be to require an employer to use wire rope slings or wire rope pendants when lifting personnel in personnel platforms. The use of wire rope slings and wire rope pendants to elevate personnel in personnel platforms is consistent with the national consensus standards and platform manufacturer's recommendations. The proposal should have no effect on most employer operations where personnel platforms are used, but only in isolated incidences such as when synthetic web slings or fiber rope is the quickest and easiest immediate alternative.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action. The Board staff is not aware of any state agencies that use personnel suspended platforms in conjunction with cranes or derricks.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposal is based on National Consensus Standard language, which has become standard general and shipyard industry practice.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. (See Impact on Businesses).

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

The proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.)

The proposed standards do not impose unique requirements on local governments. All employers—state, local and private—will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and

brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/ UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than October 13, 2006. The official record of the rule-making proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on October 19, 2006, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposal substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Keith Umemoto, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

TITLE 10. DEPARTMENT OF INSURANCE

NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING

File No. REG-2006-00002

Notice Date: August 18, 2006

Proposed Revisions to the Insurance Commissioner's Regulations pertaining to the Classification of Risks; Recording and Reporting of Data; Statistical Reporting and Experience Rating; and Approval of Advisory Pure Premium Rates to be effective January 1, 2007.

SUBJECT OF HEARING

Notice is hereby given that the Insurance Commissioner will hold a public hearing to consider (1) amendments to the California Workers' Compensation Uniform Statistical Reporting Plan—1995, (2) amendments to the California Workers' Compensation Experience Rating Plan—1995, and (3) the approval of advisory pure premium rates developed by the designated rating organization. The hearing will be held in response to a filing, submitted on August 16, 2006, by the Workers' Compensation Insurance Rating Bureau of California ("WCIRB"). This filing will be supplemented on or about September 15, 2006 to include the proposed January 1, 2007 pure premium rates and supporting documentation.

AUTHORITY AND REFERENCE

Uniform Plans and Regulations

The workers' compensation classification of risks and statistical reporting rules are set forth in Title 10, California Code of Regulations, Section 2318.6. The workers' compensation experience rating regulations are set forth in Title 10, California Code of Regulations,

Section 2353.1. The regulations were promulgated by the Insurance Commissioner pursuant to the authority granted by Insurance Code Section 11734.

Pure Premium Rates

Pursuant to Insurance Code Section 11750.3, a rating organization is permitted to develop pure premium rates for submission to the Insurance Commissioner for issuance or approval. The Insurance Code provisions regarding State rate supervision operative January 1, 1995 do not authorize the Insurance Commissioner to require insurers to use the pure premium rates submitted by the designated rating organization and issued or approved by the Insurance Commissioner. Accordingly, the pure premium rates issued or approved by the Insurance Commissioner are advisory only.

Advisory Rating Plans

Pursuant to Insurance Code Sections 11750.3(a) and 11750.3(c), a licensed rating organization may promulgate advisory plans in connection with pure premium rates and the administration of classification and rating systems and present them to the Insurance Commissioner for review.

HEARING DATE AND LOCATION

A public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the matters proposed in the WCIRB's filing, at the following date, time and place:

September 28, 2006 — 9:30 A.M.
California Department of Insurance
22nd Floor Hearing Room
45 Fremont Street
San Francisco, California

INFORMATIVE DIGEST

Pursuant to Insurance Code Sections 11734 and 11751.5, the Insurance Commissioner has designated the WCIRB as his rating organization and statistical agent. As the designated rating organization and statistical agent, the WCIRB has developed and submitted for the Insurance Commissioner's approval revisions to the California Workers' Compensation Uniform Statistical Reporting Plan—1995 and the California Workers' Compensation Experience Rating Plan—1995. The WCIRB has advised that proposed changes to the pure premium rates will be submitted for the Insurance Commissioner's approval on or about September 15, 2006. The pure premium rates are advisory only; however, adherence to the regulations contained in the California Workers' Compensation Uniform Statistical

Reporting Plan—1995 and the California Workers' Compensation Experience Rating Plan—1995 is mandatory. With regard to the standard classification system developed by the designated rating organization and approved by the Insurance Commissioner, Insurance Code Section 11734 provides that an insurer may develop its own classification system if it is filed with the Insurance Commissioner 30 days prior to its use and is not disapproved by the Insurance Commissioner for failure to demonstrate that the data produced by the insurer's classification system can be reported consistently with the California Workers' Compensation Uniform Statistical Reporting Plan—1995 or the standard classification system developed by the WCIRB and approved by the Insurance Commissioner.

The amendments to the California Workers' Compensation Uniform Statistical Reporting Plan—1995 and the California Workers' Compensation Experience Rating Plan—1995 recommended by the WCIRB to be effective January 1, 2007 are detailed in the WCIRB's filing and summarized below.

AMEND THE CALIFORNIA WORKERS' COMPENSATION UNIFORM STATISTICAL REPORTING PLAN—1995

The WCIRB recommends that the following revisions to the California Workers' Compensation Uniform Statistical Reporting Plan—1995 become effective January 1, 2007 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2007:

- Amend Part 3, *Standard Classification System*, Section VI, *Administration of Classification System*, Rule 4, *Audit of Payroll*, to decrease the physical audit threshold to reflect wage inflation and changes in insurer rate levels since the threshold was last amended.
- Amend the minimum and maximum payroll limitations for executive officers, partners, individual employers and members of a limited liability company, as well as other payroll limitations relevant to specific classifications (e.g., department stores, athletic teams and entertainment classifications), to reflect the increase in wage levels that has occurred since the minimum and maximum payroll limitations were amended on January 1, 2006.
- Amend Classification 7365, *Taxicab Operations* — *all employees*, to increase the minimum annual payroll per taxicab from \$24,700 per year to \$25,300 to reflect wage inflation since the last time the amount was adjusted on January 1, 2006.

- Amend the dual wage construction classifications noted below to increase the wage threshold by \$1 to reflect wage inflation since the last time the thresholds were amended:
 - Automatic Sprinkler Installation* (Classifications 5185/5186)
 - Carpentry* (Classifications 5645/5697)
 - Carpentry* (Classifications 5403/5432)
 - Concrete or Cement Work* (Classifications 5201/5205)
 - Electrical Wiring* (Classifications 5190/5140)
 - Gas Mains or Connections Construction* (Classifications 6315/6316)
 - Glaziers* (Classifications 5467/5470)
 - Masonry* (Classifications 5027/5028)
 - Painting* (Classifications 5474/5482)
 - Plastering or Stucco Work* (Classifications 5484/5485)
 - Roofing* (Classifications 5552/5553)
 - Sewer Construction* (Classifications 6307/6308)
 - Sheet Metal Work* (Classifications 5538/5542)
 - Steel Framing — light gauge — residential* (Classifications 5630/5631)
 - Steel Framing — light gauge — commercial* (Classifications 5632/5633)
 - Wallboard Application* (Classifications 5446/5447)
 - Water Mains or Connections Construction* (Classifications 6315/6316)
 - Waterproofing* (Classifications 5474/5482)
- Establish a new classification applicable to mortgage bankers.
- Amend Classification 8019, *Printing — quick printing or photocopying*, to limit the application of this classification to firms engaged in quick printing and add a suffix (1) to reflect the establishment of the sub-classification 8019(2) proposed elsewhere in this filing.
- Establish a new sub-classification within the Printing, Publishing and Duplicating industry group to clarify how firms engaged in document duplication or photocopying services are to be assigned.
- Eliminate Classification 4414, *Rubber Tire Mfg.*, due to inadequate statistical credibility.
- Amend Part 4, *Unit Statistical Report Filing Requirements*, Section I, *General Instructions*, Rule 2, *Effective Date*, Rule 6, *Date of Valuation*, and Rule 7, *Date of Filing*, to require the filing of sixth through tenth level unit statistical reports in order to enhance data accuracy and to provide

more information regarding loss development patterns.

- Amend Part 4, *Unit Statistical Report Filing Requirements*, Section II, *Definitions*, Rule 11, *Final Premium(s)*, to account for the extension of the Terrorism Risk Insurance Act of 2002 and to conform to similar changes proposed in the *California Workers' Compensation Experience Rating Plan—1995*.
- Amend Part 4, *Unit Statistical Report Filing Requirements*, Section II, *Definitions*, Rule 22, *Medical Loss(es)*, to clarify that costs or fees related to Medicare Set-asides should be reported as medical losses.
- Amend Part 4, *Unit Statistical Report Filing Requirements*, Section III, *Policy Information (Header)*, Rule 1, *Report Number (Report No.)*, to require the filing of sixth through tenth level unit statistical reports in order to enhance data accuracy and to provide more information regarding loss development patterns.
- Amend Part 4, *Unit Statistical Report Filing Requirements*, Section V, *Loss Information*, Subsection A, *General Loss Reporting Instructions*, Rule 3, *Grouped vs. Individual Claim Reporting*, Subpart a, *Grouped Claim Reporting*, to accommodate the sixth through tenth unit statistical report filing requirements in order to enhance data accuracy and to provide more information regarding loss development patterns.
- Amend Part 4, *Unit Statistical Report Filing Requirements*, Section VI, *Subsequent Reports, Correction Reports, and Reporting Methods*, Rule 1, *Subsequent Reports*, to accommodate the sixth through tenth unit statistical report filing requirements and for clarity in order to enhance data accuracy and to provide more information regarding loss development patterns.
- Amend the USRP for clarity and consistency.

AMEND CALIFORNIA WORKERS' COMPENSATION EXPERIENCE RATING PLAN—1995

The WCIRB recommends the following revisions to the California Workers' Compensation Experience Rating Plan—1995 to become effective January 1, 2007 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2007.

When the WCIRB submits its proposed pure premium rates on or about September 15, 2006, it will also recommend an amendment to Section III, *Eligibility and Experience Period*, Rule 1, *Eligibility Require-*

ments for California Workers' Compensation Insurance, to adjust the eligibility requirement to reflect the changes in the proposed pure premium rates.

- Amend Section I, *General Provisions*, Rule 6, *Subterfuge*, to clarify that evasion of the promulgation of an experience modification is prohibited and to remove the reference to the Inquiries, Complaints and Requests for Action, Reconsideration and Appeals rule because the reference is redundant.
- Amend Section II, *Definitions*, Paragraph 2, *Base Premium*, to reference the extension of the Terrorism Risk Insurance Act of 2002.
- Amend Section III, *Eligibility and Experience Period*, Rule 3, *Experience to be Used for Rating California Workers' Compensation Insurance Risks*, to explicitly indicate that unaudited payroll shall not be used to rate a risk.
- Amend Section VI, *Tabulation of Experience*, Rule 4, *Losses*, to delete Rule 4j pertaining to post-termination claims with accident dates prior to July 16, 1993 as such claims are no longer used in experience rating and to reference the extension of the Terrorism Risk Insurance Act of 2002 in Rule 4.
- Eliminate Section VI, *Tabulation of Experience*, Rule 11, *Post-Termination Claims*, as such claims with accident dates prior to July 16, 1993 are no longer used in experience rating.
- Amend Section VI, *Tabulation of Experience*, Rule 12, *Mental-Mental and Terrorism Claims*, to remove references to mental-mental claims with accident dates prior to July 16, 1993 since such claims are no longer used in experience rating and to reference the extension of the Terrorism Risk Insurance Act of 2002.
- Amend Section VI, *Tabulation of Experience*, Rule 13, *Closed Claims*, to conform to the recommended changes to the USRP regarding the addition of the sixth through tenth unit statistical report filing requirements.
- Eliminate Section VI, *Tabulation of Experience*, Rule 14b(2), *Revision of Losses*, to eliminate the reference to post-termination claims and mental-mental claims with accident dates prior to July 16, 1993, since such claims are no longer used in experience rating.
- Amend the expected loss rates and D-ratios to reflect the most current data available.
- Amend the average death value to reflect the most current data available.

APPROVE PURE PREMIUM RATES

Pursuant to California Insurance Code Section 11750.3(b), the WCIRB has proposed to present pure premium rates for approval by the Insurance Commissioner to be effective January 1, 2007 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2007. On or about September 15, 2006, the WCIRB will provide their final recommendations for the advisory pure premium rates, which is pending receipt of data. The Insurance Commissioner shall consider the WCIRB's proposal during the September 28, 2006 hearing and will approve, disapprove or modify the proposed pure premium rates based upon the evidence presented and the comments received prior to the closing of the record in this matter.

WCIRB ADVISORY PLANS

CALIFORNIA INSOLVENT INSURER RATING ADJUSTMENT PLAN

The WCIRB has adopted the following revisions to the California Insolvent Insurer Rating Adjustment Plan. The amendments will become effective January 1, 2007:

- Amend *Table 1 — Expected Indemnity Claim Frequency Rates (Per Million Dollars of Payroll)*, to reflect updated claim and payroll experience and amendments to the Standard Classification System.
- Amend *Table 2 — Rating Values*, to reflect updated claim and payroll experience and amendments to the Standard Classification System.

COSTS OR SAVINGS RESULTING FROM THE REGULATIONS

The Insurance Commissioner is authorized by law to promulgate advisory loss cost rates. These rates may or may not be adopted by insurance companies. To the extent they are adopted, they may result in higher or lower costs.

COST OR SAVINGS AND MANDATE TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Insurance Commissioner has determined that there will not be a cost increase or savings and there will not be any new programs mandated on any local agency or school district as a result of the proposed regulations, if adopted as proposed herein.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has determined that the proposed regulations will not have a significant effect on housing costs.

IMPACT ON SMALL BUSINESSES

The Insurance Commissioner has determined that the proposed regulations will not have a significant effect on small businesses.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The Insurance Commissioner must determine the potential cost impact of the proposed regulations on private persons or businesses directly affected by the proposal. At this time, the Insurance Commissioner expects that the proposed regulations may not have a significant effect on private persons or entities.

FEDERAL FUNDING TO THE STATE

The matters proposed herein will not affect any federal funding.

NON-DISCRETIONARY COSTS OR SAVINGS

The proposed regulations will not impose any non-discretionary costs or savings to local agencies.

COST OR SAVINGS TO STATE AGENCIES

The matters proposed herein will not result in any cost or savings to State agencies, except for the State Compensation Insurance Fund.

REIMBURSABLE COSTS

There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

ACCESS TO HEARING ROOMS

The facility to be used for the public hearing is accessible to persons with mobility impairment. Persons with sight or hearing impairments are requested to notify the

contact person for these hearings (listed below) in order to make special arrangements, if necessary.

PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS

All persons are invited to submit written comments to the Insurance Commissioner prior to the public hearing on the proposed amendments contained in the WCIRB's filing. Such comments should be addressed to:

California Department of Insurance
Attn: Christopher A. Citko
Senior Staff Counsel
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3187

Any interested person may present oral and/or written testimony at the scheduled public hearing. Written comments and oral testimony will be given equal weight in the Insurance Commissioner's deliberations.

DEADLINE FOR WRITTEN COMMENTS

All written material, unless submitted at the hearing, must be received by the Insurance Commissioner at the address listed above no later than 5:00 PM on Thursday, October 5, 2006.

TEXT OF REGULATIONS AND STATEMENT OF REASONS AVAILABLE

The Insurance Commissioner has prepared an Initial Statement of Reasons for the proposed regulations, in addition to the informative digest included in this Notice of Proposed Action and Notice of Public Hearing. The express terms of the proposed regulations as contained in the WCIRB's filing, the Notice of Proposed Action and Notice of Public Hearing and the Initial Statement of Reasons will be made available for inspection or provided without charge upon written request to the contact person for these hearings (listed above). The filing may also be accessed on the WCIRB's website at www.wcirbonline.org/filings.

ACCESS TO RULE MAKING FILE, CONTACT

Any interested person may inspect a copy of or direct questions about the proposed regulations or other matters relative to this filing, the statement of reasons thereof, and any supplemental information contained in the rule-making file upon application to the contact person (listed above). The rule-making file will be available

for inspection at 300 Capitol Mall, 17th Floor, Sacramento, California 95814, between the hours of 9:00 AM and 4:30 PM, Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the informative digest that contains the general substance of the proposed regulations, automatically will be sent to all persons on the Insurance Commissioner's Bulletins and Rulings, and California Government Code mailing lists.

ADOPTION OF REGULATIONS

Following the hearing, the Insurance Commissioner may adopt or approve regulations substantially as described in this Notice and informative digest or he may adopt or approve modified regulations. He also may refuse to adopt or approve the regulations. Notice of the Insurance Commissioner's action will be sent to all persons on the Insurance Commissioner's Bulletins and Rulings mailing list and to those persons who have otherwise requested notice of the Commissioner's action.

TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST) proposes to amend, adopt, or repeal regulations in Chapter 2 of Title 11 of the California Code of Regulations. This proposal is made pursuant to the authority vested by Penal Code § 13503 — powers of the Commission on POST, and §13506 — Commission on POST authority to adopt regulations. This proposal is intended to interpret, implement, and make specific Penal Code §13503 (e) — Commission on POST authority to develop and implement programs to increase the effectiveness of law enforcement, including programs involving training and education courses, and §13519.12 — Commission on POST authority to establish training standards involving the responsibilities of first responders to terrorism incidents and training standards for related instruction.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

POST provides a web-based, secure Electronic Data Interchange System (EDI) that connects to its law enforcement records database. The system allows approved users to submit required information to POST, automatically updates law enforcement records, and gives the users access to pertinent POST database con-

tent and reports. EDI System users are law enforcement personnel in POST-participating law enforcement agencies and presenters of POST-certified courses. POST approves each user request before granting EDI access and does not permit full-agency access. Access is limited to performing specific functions available through the EDI System; an approved user may not access all areas of the EDI System.

POST Strategic Plan Objective B.2 directs staff to simplify and expedite the course certification process. To meet this objective, staff is developing and implementing the Electronic Data Interchange (EDI) Course Certification Process. POST staff has been actively engaged in the process of design and development of the EDI Course Certification; several testing sessions have been conducted with volunteer presenters from throughout the state in which valuable feedback was obtained and acted upon by staff. The next phase of the system life cycle is the implementation phase. The implementation phase comprises making the system available to all presenters and requires presenters to submit new course certification requests using the EDI Course Certification Application.

Because presenters will be required to use the EDI system, existing regulations will no longer accurately describe the method of requesting and review new course certifications. Proposed amendments to POST regulations implement this phase of Objective B.2, simplify, and expedite, by requiring that all presenters use the EDI Course Certification Application to submit request for new course certifications. The proposed amendments also remove any reference to existing forms that used to submit requests for new course certification. POST expects that the process of obtaining course certification will be simplified and expedited due to factors such as minimizing the need to provide redundant data on multiple forms. This significantly reduces the amount of time required when POST returns a request to the requestor for correction and offers many benefits inherent to contemporary real-time data validation features and relational database information models. If approved, presenters will have the capability of submitting their request for new course certification with a higher level of confidence that all required information is contained in the original request.

The effect of the proposed changes will require all presenters requesting new course certification to access EDI and submit their request via the EDI Course Certification Application. Presenters who do not currently have EDI access will be required to apply for and obtain the necessary security certificate(s) and register for EDI access.

The proposed changes to POST Regulations implement the Electronic Data Interchange Course Certification application. The State's course presenters as well as

the California Commission on Peace Officer Standards and Training (POST) will benefit from the capabilities provided by contemporary information technology systems by migrating to the EDI course certification process. By implementing this enterprise model system, which is similar to online systems used by commercial corporations and other government agencies, POST can streamline the course certification process. POST is streamlining the process by eliminating many of the inefficiencies inherent in the current paper based process. The current suite of forms that course presenters must complete to request a course certification inherently includes data redundancy, incomplete data, invalid data, etc. Consequently, the user interface presented to the user via the EDI Course Certification application replaces and eliminates the need for preformatted paper forms. Because the EDI Course Certification application exploits the power of relational database design, and minimizes data redundancy because there is no need to collect the name of an instructor more than one time. This application provides data validation (an eight-hour block of training cannot be part of a 4-hour training course); real-time status checks are available, and greatly reduces delays for items needing correcting.

POST has converted the content of POST forms used for the course certification process to an electronic format. Course presenters will use the POST Electronic Data Interchange (EDI) Course Certification Process instead of the paper forms. The electronic format captures the content of the paper forms, with exceptions indicated in the proposed language and statement of reasons documents. The "new" items collect information needed to better evaluate the certification request and, in several cases, collect needed information that POST staff currently obtains by telephone. The "deleted" items are either redundant, collected in another part of the Course Certification process, or are not applicable in the EDI process (EDI access approval replaces signature).

The January 1, 2007 effective date of the regulation has been set in consideration of the time taken for presenters to plan for implementing and using the EDI Course Certification application. Developed of this implementation date is based on the timelines required for software development, user guide development, staff training, and demonstration to course administrators by Area Consultants.

Adoption of Proposed Regulations

Following the close of the public comment period, the Commission may adopt the proposal substantially as set forth without further notice or the Commission may modify the proposal if such modifications remain sufficiently related to the text as described in the Informative Digest. If the Commission makes changes to the

language before the date of adoption, the text of any modified language, clearly indicated, will be available, at least 15 days before adoption, to all persons whose comments POST received during the public comment period, and to all persons who request notification from POST of the availability of such changes. Address any requests for the modified text to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date on which the revised text is available.

Text of Proposal, Rulemaking File, and Internet Access

The following information regarding the proposed regulatory action is located on the POST website at www.post.ca.gov/RegulationNotices/RegulationNotices.asp:

- POST bulletin and Notice of Proposed Regulatory Action
- Text of Proposed Regulatory Action
- Initial Statement of Reasons.

Anyone who does not have Internet access may request a copy of the above documents by calling 916.227.4847 or by submitting a written request to the **Contact Persons** listed below. Please refer to POST Bulletin 2006-15. The rulemaking file contains the above-mentioned documents and all information considered for this proposal. The Commission will maintain the file for inspection during the Commission's normal business hours (Monday through Friday, 8: a.m. to 5 p.m.).

The Final Statement of Reasons will be prepared after the close of the public comment period. To request a copy, contact POST via the above phone number, or by writing to the address under **Contact Persons** (see below) in this notice.

Public Comment

The Commission hereby requests written comments related to the proposed actions. Please direct all comments to Executive Director Kenneth J. O'Brien. POST must receive all written comments before 5:00 p.m. on October 16, 2006, by fax 916.227.5271 or by U.S. Mail addressed to the Commission on Peace Officer Standards and Training, 1601 Alhambra Boulevard, Sacramento, CA 95816-7083.

A public hearing is not scheduled. Pursuant to Government Code Section 11346.8, any interested person, or his/her duly authorized representative may request that POST hold a public hearing. POST must receive the written request no later than 15 days prior to the close of the public comment period.

Contact Persons

Please direct any inquiries or comments pertaining to the proposed action to Patricia Cassidy, Associate Ana-

lyst, 1601 Alhambra Boulevard, Sacramento, CA 95816-7083, by telephone at 916.227.4847, by FAX at 916.227.5271, or by email at Pat.Cassidy@post.ca.gov. The back-up contact person for this proposal is Gregory Murphy, Senior Consultant; contact him by telephone at 916.227.3918, or by email at Gregory.Murphy@post.ca.gov.

Estimate of Economic Impact

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-Discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Costs to any Local Agency or School District for which Government Code Section 17561 Requires Reimbursement: None

Significant Statewide Adverse Economic Impact Directly Affecting California Businesses, including Small Business: The Commission on Peace Officer Standards and Training has made an initial determination that the amended regulations will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability to compete with businesses in other states. The Commission on Peace Officer Standards and Training has found that the proposed amendments will have no effect on California businesses, including small businesses, because the Commission sets selection and training standards for law enforcement and does not have an impact on California businesses, including small businesses.

Cost Impacts on Representative Private Persons or Businesses: The Commission on Peace Officer Standards and Training is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: The Commission on Peace Officer Standards and Training has made an initial determination that the proposed regulation would have no effect on housing costs.

Assessment

The adoption of the proposed regulation amendments will neither create nor eliminate jobs in the state of California, and will not result in the elimination of existing businesses or create or expand businesses in the State of California.

Consideration of Alternatives

To take this action, the Commission must determine that no reasonable alternative considered by the Commission, or otherwise identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is pro-

posed, or would be as effective as and less burdensome to effected private persons than the proposed action.

TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

NOTICE OF PROPOSED REGULATORY ACTION Regulations 1005, 1007, and 1080, and Procedures D-1 and H-3

Amend Training and Testing Specifications for Peace Officer Basic Courses

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST) proposes to amend regulations in Chapter 2 of Title 11 of the California Code of Regulations. This proposal is made pursuant to the authority vested by Penal Code sections 13503 (powers of the Commission on POST) and 13506 (Commission on POST authority to adopt regulations). This proposal is intended to interpret, implement, and make specific Penal Code sections 13503(e) (Commission on POST authority to develop and implement programs to increase the effectiveness of law enforcement, including programs involving training and education courses), 13510 (Commission on POST authority to adopt and amend rules establishing minimum standards for California local law enforcement officers) and 13510.5 (Commission on POST authority to adopt and amend standards for certain other designated California peace officers).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Academies and training presenters use the *Training and Testing Specifications for Peace Officer Basic Courses* publication, incorporated by reference into POST Regulations, to teach and test the POST mandated instruction and testing for basic training courses.

All changes to basic academy curriculum begin with recommendations from law enforcement practitioners, or in some cases, via legislative mandates. POST then facilitates meetings with curriculum advisors and subject matter experts (SMEs) who recommend changes to existing academy curriculum. The Standing Alignment Committee (SAC), which is comprised of academy directors and coordinators, reviews these recommendations. The SAC-approved recommendations are reviewed by all academies at the quarterly Basic Course Consortium meetings facilitated by POST. Once approved by majority vote of all academies, the recommendations are forwarded to a Test Review Panel, also comprised of academy administrators that identify test-

ing questions and pass point thresholds for the new curriculum. The POST Commission reviews the completed work of all committees for approval.

The proposed changes include the following:

- Re-distribute course hours between learning domains to ensure adequate time for each topic
- Make additional curriculum updates, as part of an ongoing curriculum review, in Learning Domains #12, Controlled Substances; #28, Traffic Enforcement; and #41, Hazardous Materials.
- Establish examination review and scenario demonstration definitions and requirements
- Revise the current two-part Level III Module course into a single component
- Add Learning Domain 43, Emergency Management, to comply with state and federal training requirements.

The Consortium approved these proposed changes at its June 14, 2006 meeting and the Commission approved them at its July 20, 2006 Commission meeting, subject to the Notice of Proposed Regulatory Action process. Upon adoption of the proposed amendments, academies and course presenters will be required to teach and test to the updated curriculum. The proposed effective date is January 1, 2007.

Re-distribute course hours and apply curriculum updates

In 2002, the Basic Training Bureau embarked on a complete review of the Regular Basic Course (RBC) to integrate Leadership, Ethics, and Community Policing into the curriculum. As a result, POST removed redundant material from Learning Domains (LDs), moved some learning objectives from one LD to another, moved some learning objectives to the Field Training Program, and eliminated other outdated learning objectives. These content changes went into effect on January 1, 2006, with no changes to the minimum hourly requirement for each LD. This gave training presenters an opportunity to work with the new curriculum and recommend the number of hours needed to deliver instruction in each LD.

Feedback from the course presenters demonstrated the need to create a new hourly distribution; therefore, the Standing Alignment Committee developed a revised hourly distribution, which the Basic Course Consortium approved in June 2006. Staff applied the revised hourly distribution to the learning domains in all basic course formats. The total minimum hourly requirements for each course remain the same. In the context of re-distributed the hours, several learning objects were incorporated and deleted to apply the revised hourly distribution to the appropriate level of training in the Modular Format.

As part of the ongoing curriculum review, additional proposed revisions either reflect emerging training needs, improve student learning and evaluation, or to comply with legislative mandates in the following domains: LD 12, Controlled Substances; LD 28, Traffic Enforcement; and LD 41, Hazardous Materials Awareness. In addition to amending the learning domains for the aforementioned reasons, the SMEs also propose non-substantial changes at the same time to improve clarity and readability of the domains.

New learning domain LD 43, *Emergency Management*, has been created to comply with the state requirement for 8 hours of training in Law Enforcement Response to Terrorism (LERT) and the federal mandate for 8 hours of training in the National Incident Management System (NIMS). Penal Code section 13519.12(b) requires the Commission to expedite the delivery of LERT training to law enforcement through maximum use of its local and regional delivery systems. The federal training in NMS is required for all public employees who may be tasked, directed or called upon to respond for an emergency.

Establish Examination Review and Scenario Demonstration Definitions and Requirements

New language defines and requires a time period for examination review. The Basic Course requires students to gain competency in 42 Learning Domains. To demonstrate the possession of this knowledge, students must take and pass 27 high-stakes written knowledge examinations. Following the examinations, presenters review the results with students as a method of enhancing their understanding of the material. Heretofore, the time needed for reviewing test results has not been included in the minimum hours required for delivery of the Learning Domain curricula. Including examination review in the minimum hours ensures that appropriate time will be devoted to this process.

Job simulation testing, known as Scenario Testing, is the assessment method utilized to determine whether students have acquired the necessary peace officer competencies and to what degree. These tests require students to participate in graded activities that are designed to simulate actual on-the-job incidents, and require them to perform acceptably in a variety of critical, life-like situations. The proposed 18-hours of Scenario Demonstration time is designed to provide students the opportunity to practice and be mentored in the acquisition of the needed competencies through problem-based learning methods.

Revise the Current Two-Part Level III Module into a Single Component

In the process of developing a revised hourly distribution, several issues were identified in its application to the Modular Format. The Consortium approved

the recommended hourly distribution, in principle, and asked POST staff to review the changes in relation to the Modular Format. An issue that became problematic, during the review, was the relationship of the PC 832 Course to the Modular Format. Powers of arrest training (PC 832) is required for all peace officers prior to the exercise of peace officer powers. The PC 832 Course serves as a stand alone entry-level of instruction for limited authority peace officers. The Regular Basic Course and the Specialized Investigators' Basic Course meet the powers of arrest training requirement by including PC 832 material within the respective courses. The Modular Format includes the PC 832 Course as a component (Part 1 of the two-part Level III Module) in order to accommodate training for reserve officers.

Attempts by the SAC to apply the new hourly distribution to the Modular Format, in its present configuration, indicated that it would be necessary to change the PC 832 Course. Because the PC 832 Course is the basic training course for numerous categories of peace officers, it would be impractical to revise it for the sole purpose of accommodating reserve officer training. After review by the SAC and POST staff, it has been determined that the best alternative would be to revise the current two-part Level III Module into a single component that includes powers of arrest training in the same manner as the RBC and SIBC.

The new Level III Module would incorporate all of the material covered in the two-part format with the same minimum required hours. The PC 832 Course would remain unchanged and would continue to be a stand-alone course. This allows course presenters to apply the proposed new hourly distribution to the Modular Format without changing the minimum hourly requirement for any of the components.

Adoption of Proposed Regulations

Following the close of the public comment period, the Commission may adopt the proposal substantially as set forth without further notice or the Commission may modify the proposal if such modifications remain sufficiently related to the text as described in the Informative Digest. If the Commission makes changes to the language before the date of adoption, the text of any modified language, clearly indicated, will be available, at least 15 days before adoption, to all persons whose comments were received by POST during the public comment period, and to all persons who request notification from POST of the availability of such changes. A request for the modified text should be addressed to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date on which the revised text is available.

Text of Proposal, Rulemaking File, and Internet Access

The following information regarding the proposed regulatory action is provided on the POST website at www.post.ca.gov/RegulationNotices/RegulationNotices.asp:

- POST bulletin and Notice of Proposed Regulatory Action
- Text of Proposed Regulatory Action
- Initial Statement of Reasons.

Anyone who does not have Internet access may request a copy of the above documents by calling 916.227.4847 or by submitting a written request to the **Contact Persons** listed below. Please refer to POST Bulletin 2006-14. The rulemaking file contains the above-mentioned documents and all information considered for this proposal. The Commission will maintain the file for inspection during the Commission's normal business hours (Monday through Friday, 8: a.m. to 5 p.m.).

The Final Statement of Reasons will be prepared after the close of the public comment period. To request a copy, contact POST via the above phone number, or by writing to the address under **Contact Persons** (see below) in this notice.

Public Comment

The Commission hereby requests written comments related to the proposed actions. Please direct all comments to Executive Director Kenneth J. O'Brien. POST must receive all written comments before 5:00 p.m. on October 16, 2006, by fax 916.227.5271 or by U.S. Mail addressed to the Commission on Peace Officer Standards and Training, 1601 Alhambra Boulevard, Sacramento, CA 95816-7083.

A public hearing is not scheduled. Pursuant to Government Code Section 11346.8, any interested person, or his/her duly authorized representative may request that POST hold a public hearing. POST must receive the written request no later than 15 days prior to the close of the public comment period.

Contact Persons

Please direct any inquiries or comments pertaining to the proposed action to Patricia Cassidy, Associate Analyst, 1601 Alhambra Boulevard, Sacramento, CA 95816-7083, by telephone at 916.227.4847, by FAX at 916.227.5271, or by email at Pat.Cassidy@post.ca.gov. The back-up contact person for this proposal is Julie Hemphill, Associate Analyst; she may be reached by telephone at 916.227.0544, or by email at Julie.Hemphill@post.ca.gov.

Estimate of Economic Impact

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-Discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Costs to any Local Agency or School District for which Government Code Section 17561 Requires Reimbursement: None

Significant Statewide Adverse Economic Impact Directly Affecting California Businesses, including Small Business: The Commission on Peace Officer Standards and Training has made an initial determination that the amended regulations will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability to compete with businesses in other states. The Commission on Peace Officer Standards and Training has found that the proposed amendments will have no effect on California businesses, including small businesses, because the Commission sets selection and training standards for law enforcement and does not impact California businesses, including small businesses.

Cost Impacts on Representative Private Persons or Businesses: The Commission on Peace Officer Standards and Training is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with this proposed action.

Effect on Housing Costs: The Commission on Peace Officer Standards and Training has made an initial determination that the proposed regulation would have no effect on housing costs.

Assessment

The adoption of the proposed regulation amendments will neither create nor eliminate jobs in the state of California, and will not result in the elimination of existing businesses or create or expand businesses in the State of California.

Consideration of Alternatives

To take this action, the Commission must determine that no reasonable alternative considered by the Commission, or otherwise identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to effected private persons than the proposed action.

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE ZERO EMISSION BUS REGULATION

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider adoption of amendments to the California Zero Emission Bus (ZBus) Regulation. The proposed amendments would postpone the purchase requirement for zero emission buses by three years for transit agencies on the diesel path, and one to two years for those agencies on the alternative fuel path. A requirement for an advanced demonstration project is proposed to offset some of the emission losses resulting from the postponement.

DATE: October 19, 2006

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., October 19, 2006, and may continue at 8:30 a.m., October 20, 2006. This item may not be considered until October 20, 2006. Please consult the agenda for the meeting, which will be available at least 10 days before October 19, 2006, to determine the day on which this item will be considered.

For individuals with sensory disabilities, this document is available in Braille, large print, audiocassette or computer disk. Please contact ARB's Disability Coordinator at 916-323-4916 by voice or through the California Relay Services at 711, to place your request for disability services. If you are a person with limited English and would like to request interpreter services, please contact ARB's Bilingual Manager at 916-323-7053.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to title 13, California Code of Regulations, sections 2023.1 (Fleet Rule for Transit Agencies — Urban Bus Require-

ments), Transit Fleet Requirements), 2023.3 (Fleet Rule for Transit Agencies — Zero-Emission Bus Requirements), and 2023.4 (Reporting Requirements for Transit Agencies).

Background: In February 2000, the Board confirmed its continued commitment toward improving emissions from public transportation by establishing a new fleet rule for transit agencies and more stringent emission standards for new urban bus engines and vehicles. Under the fleet rule, each transit agency was required to select a compliance path — either the “diesel” path or the “alternative fuel” path. The regulations also included requirements regarding ZBuses, with the goal of developing zero emission transit fleets. Zero emission technologies include battery electric buses, electric trolley buses with overhead twin wire power supply, and hydrogen fuel cell buses. A zero emission bus is defined as producing zero exhaust emissions of any criteria or precursor pollutant under any and all possible operational modes and climates. The ZBus regulation consisted of two primary elements for large transit agencies — requirements that diesel path agencies initiate a ZBus Demonstration Project and a requirement that a minimum percentage of buses purchased or leased be ZBuses starting in the 2008 model year.

Under the initial regulation, transit agencies that were on the diesel path and had more than 200 urban transit buses on January 31, 2001, were required to implement a ZBus Demonstration Project. As many as three agencies could team up to share costs and resources. The buses were to begin revenue service no later than July 1, 2003, and remain in revenue service for a minimum duration of 12 calendar months. The agencies would then submit a written report on the demonstration project to the ARB’s Executive Officer no later than January 31, 2005. Five transit agencies met the criteria for having to implement a ZBus Demonstration Project.

Progress on the initial demonstration projects was mixed. Four of the five agencies selected fuel cell powered buses as the technology most likely to cost-effectively meet the required performance standards and emission requirements in the long term. At the time the regulation was developed, information available to staff indicated that fuel cells would be deployed in buses before light-duty vehicles. This was due to the buses’ ability to handle larger size and weight fuel cells. As it turned out, fuel cell and vehicle manufacturers switched their focus towards developing light-duty fuel cell applications.

In June 2004, the staff brought proposed amendments to the demonstration project requirements to the Board. After reviewing the status of technology and meeting with bus manufacturers and transit agencies, staff concluded that an adequate number of fuel cell buses were not available. The Board amended the demonstration

project requirements by reducing the number of buses required to three per demonstration project, instead of three per transit agency. This brought the cost of the demonstration project back to that projected in the original rulemaking. The Board also delayed the date the demonstration project buses were to be in operation to the end of February 2006.

The originally-adopted purchase requirements remain in effect. Large transit agencies (those with more than 200 buses) on either fuel path are required to implement the ZBus purchase component of the program. For transit agencies on the diesel fuel path, a minimum 15 percent of purchase and lease agreements, when aggregated annually, for 2008 through 2015 model year urban buses must be ZBuses. For transit agencies on the alternative fuel path, the 15 percent ZBus acquisition requirement starts with model year 2010 and runs through model year 2015. Transit agencies on the diesel path must submit a compliance plan by January 2007 and transit agencies on the alternative fuel path must submit a compliance plan by January 2009. A transit agency introducing a ZBus earlier than required will earn credits that may be used in meeting the overall acquisition requirements.

The Proposed Amendments: As the date for implementation of the purchase requirement for the ZBus regulation approaches, staff’s assessment of technology readiness and the cost of implementation indicates that further amendments of the regulation are necessary. The proposed amendments include a delay of the ZBus purchase requirement and addition of an Advanced Demonstration Project element. They also revise other regulatory provisions to conform with and clarify the proposed amendments.

Staff is proposing that the start of the purchase requirement be postponed by three years for transit agencies on the diesel path, so that it would start with the 2011 model year. For transit agencies on the alternative fuel path, the delay would be one or two years — to the 2011 or 2012 model years — with the two-year delay applicable to alternative fuel path transit agencies choosing to participate in the Advanced Demonstration Program requirement described below. Since the purchase requirement will be delayed, staff proposes that the purchase requirement be extended through model year 2026 for transit agencies in either fuel path.

To provide performance goals and production targets for manufacturers and confidence to transit agencies, staff is proposing a provision under which no later than June 30, 2009, the Executive Officer is to evaluate the purchase cost, the fuel cell durability or warranty and reliability. The Executive Officer would be directed to reduce the percentage purchase requirement for a specified model year if specified criteria are not met. The Executive Officer would repeat this process annually.

To ensure continued development of ZBus technology and offset some of the emission losses, staff is proposing a new Advanced Demonstration Project element. Participation would be mandatory for transit agencies on the diesel path and optional for those on the alternative path. The start date of the Advanced Demonstration Project would depend on the fueling path of the transit agency: diesel path agencies to start January 1, 2009, and the alternative fuel path agencies to begin on January 1, 2010. The Advanced Demonstration Project would provide valuable information on the integration of zero emission buses within the regular fleet.

A single transit agency conducting an Advanced Demonstration Project would have to purchase a minimum of six ZBuses, which would need to be in revenue service as of January 1, 2009. An alternative fuel path transit agency could meet up to half of its ZBus minimum with near zero emission buses at a 3 to 1 ratio. Instead of a single transit agency program, agencies may join together to conduct a multi-transit agency Advanced Demonstration Project. The multi-transit agency demonstration requires a minimum of twelve buses overall, with each agency purchasing a minimum of three ZBuses. For example, a demonstration with five transit agencies participating would require 15 ZBuses, since each transit agency needs to purchase a minimum of three buses. The near zero emission mechanism would be available for alternative fuel path transit agencies.

COMPARABLE FEDERAL REGULATIONS

Currently there are no federal emission standards or requirements for zero-emission or near zero emission buses.

AVAILABILITY OF DOCUMENTS AND CONTACT PERSONS

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulation, which includes a summary of the economic and environmental impacts of the proposal. The ISOR is entitled: "Staff Report: Initial Statement of Reasons: Proposed Amendments to the Zero Emission Bus Regulation."

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on the ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, California 95814, or by calling (916) 322-2990 at least

45 days prior to the scheduled hearing October 19, 2006.

Upon its completion after the Board hearing, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the ARB's website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to Ms. Lesley Crowell, Air Pollution Engineer, by email at lcrowell@arb.ca.gov, or by phone at (916) 323-2913, or to Mr. Gerhard Achtelek, Manager, ZEV Infrastructure Section, by email at gachteli@arb.ca.gov or by phone at (916) 323-8973.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Ms. Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Ms. Alexa Malik, Regulations Coordinator, at (916) 322-4011. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at www.arb.ca.gov/regact/zbus06/zbus06.htm.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will not create costs or savings to any state agency or in federal funding to the state, costs or mandate to any school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other non-discretionary savings to state agencies. The regulatory proposal directly impacts local agencies that operate transit fleets with more than 200 urban buses. Staff projects an estimated combined cost savings to these transit agencies of approximately \$59 million over the four year period beginning January 2008. Extension of the purchase requirement to cover 2016-2026 is expected to result in a combined cost increase to transit agencies of approximately \$32-58 million annually over that 11 year period, relative to no zero emission buses being

purchased, but cost estimates that far in the future are necessarily speculative. The cost estimates are not indicative of the actual direct cost to transit agencies because the agencies typically receive federal and regional funds for the acquisition of buses and implementing alternative fuel infrastructure.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. Any business involved in the production or use of zero emission buses potentially would be indirectly affected by the proposed amendments. Those potentially affected are manufacturers that supply components for fuel cells, batteries, integration systems, chassis, and distributors and retailers that sell such equipment. Most of these manufacturers are located outside of California. The regulation directly impacts transit agencies that operate 200 or more urban buses.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California; the creation of new businesses or elimination of existing businesses within the State of California; or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will not affect small businesses because the modifications are discretionary and do not affect any small businesses.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer finds that the reporting requirements of the regulation that apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by email before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received **no later than 12:00 noon, October 18, 2006**, and addressed as follows:

Postal mail: Clerk of the Board,
Air Resources Board
1001 I Street, Sacramento,
California 95814

Electronic submittal:
<http://www.arb.ca.gov/lispub/comm/bclist.php>

Facsimile submittal: (916) 322-3928

The Board requests, but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff, in advance of the hearing, any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in Health and Safety Code sections 39600, 39601, 39659, 39667, 43013, 43018, 43100, 43101, 43104, and 43806. This action is proposed to implement, interpret and make specific sections 39002, 39003, 39017, 39018, 39033, 39500, 39650, 39667, 39700, 39701, 40000, 41510, 43000, 43000.5, 43009, 43013, 43018, 43102, 43701(b), 43801, 43806 of the Health and Safety Code, and section 233 and 28114 of the Vehicle Code.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also approve the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the reg-

ulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, California 95814, (916) 322-2990.

TITLE 14. FISH AND GAME COMMISSION

NOTICE OF PROPOSED CHANGES IN REGULATIONS

NOTICE IS HEREBY GIVEN that the Fish and Game Commission, pursuant to the authority vested by sections 200, 202, 205, 220 and 315 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 206 and 220 of said Code, proposes to add sections 5.81 and 27.91; to amend sections 1.62, 1.63, 1.67, 2.00, 5.00, 5.80, 7.00, 7.50, 27.60, 27.65, 27.90, 27.95, 28.20, 29.70, 29.80, 195, and 701, Title 14, California Code of Regulations, regarding Sport Fishing Regulations for 2007-2009.

INFORMATIVE DIGESTS/POLICY STATEMENT OVERVIEW

Amend Sections 1.62, 5.80, 27.60, 27.90, 27.95, 195, and 701 Add Sections 5.81 and 27.91 Re: Sturgeon Sport Fishery Regulations

California's green sturgeon and white sturgeon support a popular sport fishery in the San Francisco Estuary and Sacramento-San Joaquin River System and a lesser fishery in the ocean. Green sturgeon and white sturgeon are prone to overfishing due to their life-histories and behavior. Their numbers are also subject to decline attributable to habitat loss and habitat degradation. White sturgeon (in particular) are subject to organized poaching and illegal commercialization of their highly-valuable eggs and flesh.

Current fishing regulations for these two sturgeon species provide a year-round fishery, a daily bag and possession limit of one fish, a size limit of 46 to 72 inches total length, and area and seasonal closures. These regulations do not differentiate between different life histories and population status, ignore the population-effects of varying production of young sturgeon, can

not manage the boom-and-bust character of the fishery, and make it difficult to deter poaching and illegal commercialization.

The Department of Fish and Game (Department) is proposing regulations which will facilitate existing efforts to improve California's sturgeon populations and protect the sturgeon fishery by improved habitat, better fish passage, increased population and fishery monitoring, effective enforcement, and comprehensive coordination with the public.

The proposed regulations include a size limit for white sturgeon of 46 to 60 inches total length, no retention of green sturgeon, a daily bag limit of one white sturgeon, an annual bag limit three white sturgeon, no authorization of boat limits when sturgeon fishing in ocean waters, and an annual sturgeon report card with tags.

If the regulations proposed here are implemented and substantially enforced, the fundamental character of California's sturgeon fishery will be preserved while important additional fishery management, population management, and anti-poaching measures will be effected.

Section 1.62, Title 14, CCR: Section 1.62 addresses handling requirements for fish to be released due to size restrictions. However, Section 1.62 references only handling of fish that are less than the legal size.

The proposed amendment to Section 1.62 would extend the protections now afforded fish less than legal size to fish greater than legal size. Handling requirements afforded fish — particularly sturgeon — greater than legal size are basic conservation measures designed to minimize stress and mortality to captured fish that must be released.

Sections 5.80 and 27.90, Title 14, CCR: These sections limit retention of sturgeon for inland (Section 5.80) and ocean (Section 27.90) waters. The current sections do not differentiate between white sturgeon and green sturgeon.

The proposed amendment removes green sturgeon to their own section and includes measures to improve white sturgeon spawning potential, population resiliency, fishery data, and anti-poaching efforts:

- (1) a white sturgeon size limit of 46 to 60 inches total length,
- (2) a 3-fish-per-year white sturgeon bag limit,
- (3) specific requirements for a Sturgeon Fishing Report Card, and
- (4) a requirement to apply tags to retained white sturgeon.

The size limit would protect approximately 12 year-classes of sturgeon from harvest during a period when female sturgeon of this size and age have tremendous reproductive potential.

The 3–fish annual bag limit would allocate the sturgeon resource more–equitably and reduce the incentive for illegal commercialization of sturgeon.

The report card with tags would be necessary to enforce the annual bag limit and to collect much–needed information on catch of sturgeon by anglers. Because enforcement of the annual bag limit and collection of catch data are both very important, possession of the card and use of the tags would be required of children and other potentially non–licensed anglers (e.g., those participating fishing from piers). These potentially non–licensed anglers were recently estimated at about 16 % of all anglers in marine waters during 2004 and 2005.

Sturgeon Fishing Report Card Requirements

- (1) Any person fishing for sturgeon shall have in their possession a nontransferable Sturgeon Fishing Report Card issued by the department
- (2) This includes anglers who are under 16 years of age, anglers who are fishing from a public pier, and anglers who hold a lifetime fishing license. Anglers who are under 16 years of age may purchase a sturgeon fishing report card without purchasing a sport fishing license.
- (3) A Sturgeon Fishing Report Card shall be valid for the calendar year as shown on the report card.
- (4) No person may purchase more than one Sturgeon Fishing Report Card per year or possess any Sturgeon Fishing Report Card other than their own.
- (5) Anglers must return their card by January 31 of the following year shown on the report card to the address specified on the Sturgeon Fishing Report Card.
- (6) If the angler holds a sport fishing license, the report card number shall be entered in ink on the angler’s sport fishing license, and the sport fishing license number shall be entered in ink on the report card on the appropriate line.
- (7) Whenever the cardholder catches a sturgeon, whether the fish is retained or released, the cardholder shall use a ball point pen to immediately record on the Sturgeon Fishing Report Card all of the following information: month and day, catch location, and species of sturgeon. If a white sturgeon is retained, the total length of the fish must also be recorded on the report card immediately.

Sturgeon Tagging Requirements

- (1) A Sturgeon Fishing Report Card includes three tags that are to be used to tag any white sturgeon that is retained.

- (2) After retaining a white sturgeon the date the fish is taken shall be immediately recorded on the tag with a ball point pen.
- (3) The angler shall immediately attach the tag to the body of the white sturgeon, and leave the tag in place until the fish is processed, steaked, or filleted for consumption and stored at a residence or non–transient location.

Sections 5.81 and 27.91, Title 14, CCR: This action would create sections specific to green sturgeon for inland (Section 5.81) and ocean (Section 27.91) waters, eliminate retention of green sturgeon, and complement the proposals to amend sections 5.80 and 27.90 so that it addresses only limits to white sturgeon retention.

Section 27.60, Title 14, CCR: This section limits retention of sturgeon in ocean waters. With regards to sturgeon, it is simply a table that reiterates information in Section 27.90.

The proposed amendment would make contents of the table consistent with Section 27.90 and no authorization of boat limits while sturgeon fishing in ocean waters to align with proposed Section 195 changes. Furthermore, the amendment would complement the proposed establishment of Section 27.91 on green sturgeon retention.

Section 27.95, Title 14, CCR: This section limits take of sturgeon in an area of San Francisco Bay between January 1 and March 15. The proposed amendment is a slight wording change that would complement the proposed changes to sections 27.90 and 27.91.

Section 195, Title 14, CCR: This section contains the regulations for boat limits in ocean waters. The proposed amendment has no authorization of boat limits while sturgeon fishing in ocean waters to ensure accurate data is collected from the report cards.

Section 701, Title 14, CCR: This section contains regulatory form numbers that are incorporated by reference and their fees which are adjusted annually pursuant to the provisions of Section 699, Title 14, CCR.

The proposed amendment provides the annual fee updates for the Declaration for Multi–Day Fishing Trip, Permit Authorizing Transit of a Recreational Fishing Vessel Through Areas Closed to Fishing (Annual and 30 days or less) forms, adds 2007 Salmon Punch Card and 2007 Steelhead Fishing Report and Restoration Card form numbers and fees to this section, reflects the required changes made to sections 5.80 and 27.90 for the Sturgeon Fishing Report Card.

The Sturgeon Fishing Report Card fee will range from \$0 to \$7.50, which are the minimum and maximum permit prices that the Department can charge without legislation. The final fee will be determined from report card printing and administration costs, final funding source, the projected anglers and a 5% license

agent handling fee calculated pursuant to Fish and Game Code 1055(b).

Minor changes were made to improve the clarity of the regulations.

**Amend Section 1.63
Re: Movement of Live Fish**

Currently Section 1.63, Title 14, California Code of Regulations (CCR), reads “Except as provided in sections 4.00 through 4.30 and 230, live fin fish taken under the authority of a sport fishing license may not be transported alive from the water where taken.”

The phrase “taken under the authority of a sport fishing license” creates a loophole. Juveniles under the age of 16 are not required to possess a sport fishing license when fishing. This means that a juvenile could transport live sport taken fin fish and not be in violation of the law. Additionally, it could be argued that persons taking fin fish without first obtaining a sport fishing license would not be in violation of this section.

Lake Davis is a prime example of the adverse effect of transporting certain fish species from one location to another. The lake, which once supported a superb rainbow trout fishery, has now been taken over by northern pike believed to be illegally transplanted from unknown sources outside of California or possibly from nearby Frenchman Reservoir, where pike had also been illegally introduced. This pike population now threatens native salmon and steelhead populations found downstream in the Sacramento–San Joaquin river systems and Delta.

This regulations proposal will add additional language to clarify that it is illegal to transport live fin fish any time by anybody, unless otherwise authorized. These proposed regulations will reduce public confusion and improve enforceability of the regulations.

**Amend Section 1.67
Re: Native Reptiles and Amphibians**

Currently Section 1.67, Title 14, California Code of Regulations (CCR), leaves its intent open to possible misinterpretation. Some may interpret that specific specimens of amphibians and reptiles that are imported into California, which are the same species or subspecies of indigenous California animals, are not native to California pursuant to Section 1.67. Such an interpretation can result in importation of reptiles and amphibians, although of the same species or subspecies as indigenous California specimen, for commercialization purposes. This can then lead to illegal commercialization of specimens that originate from the wild in California but are presented as being imported from another state.

Section 1.67 should be clearly understandable by both those who enforce and those who are directly affected by state regulations. Unclear regulatory language can cause an additional burden of proof which may hinder effective enforcement of Title 14 sections that rely on, at least in part, the definition of amphibians and reptiles found in Section 1.67. If the courts determine that regulations are not clear it can result in lack of prosecution of people illegally commercializing and/or poaching California native reptiles and amphibians.

Section 1.67 does not currently state that an individual specimen claimed to have been taken or produced in another state is nonetheless a native specimen, since it is of a species or subspecies indigenous to California. The more clearly this definitive section is the better it serves the enforceable Title 14 sections which are meant to protect native species and subspecies of amphibians and reptiles.

The regulations proposal directly states that the definition includes all specimens regardless of their origin. This will address the interpretation issue since it readily eliminates origin as a consideration for what specimens would not be considered native.

**Amend Section 2.00
Re: Fishing Methods — General**

Section 2.00, Title 14, California Code of Regulations (CCR), outlines statewide fishing methods in inland waters, with some exceptions. Currently, the section states that fish may be taken by “angling” with one closely attended rod and line. Angling is defined as, “to take fish by hook and line with the line held in the hand, or with the line attached to a pole or rod held in the hand or closely attended in such manner that the fish voluntarily takes the bait or lure in its mouth.”

There is nothing in Section 2.00 that specifically states an individual cannot keep snagged fish. Section 2.00 is commonly used when a citation is written to a subject for keeping a snagged fish and when citing a subject for unlawfully using more than one line in inland waters. This citing section sometimes confuses court personnel. They see Section 2.00 and assume the citation was issued for using more than one line, which is less heinous, than unlawfully snagging and keeping a fish unlawfully.

Since the section does not specifically mention or define snagging the language is confusing to judges and court personnel. In order to cite for Section 2.00 officers must also explain the definition of angling in their report as well as to the court. In addition, when laws are unclear or confusing there is greater propensity for courts to dismiss cases resulting in lost revenue to the Department.

This regulations proposal adds additional language that clearly states its illegal to kill or retain a fish that did

not actively take the bait or lure in its mouth and requires these fish to be released immediately unharmed into the water. The proposed changes will reduce public confusion and improve enforceability of the regulations.

Amend Sections 5.00 and Subsection 7.50(b)(68.3) and Repeal Subsection 7.50(b)(73.5)

Re: Black Bass Seasons in Inyo, Shasta, Modoc, and Mono Counties and Repeal of Haiwee Reservoir Special Fishing Regulations

Under the current black bass regulations, it is legal to fish closed trout waters in Inyo and Mono counties for black bass all year. Enforcement staff is encountering increasing numbers of anglers that claim to be bass fishing while actually catch and release fishing for trout. During informal conversations with several anglers and one local fishing guide/outfitter, Enforcement has been told that some people are advocating catch and release trout fishing during closed trout season. In order to circumvent the current regulations, these anglers can claim to be bass fishing when contacted by a Warden. These areas are prized trout areas and the proposed regulation changes will help eliminate fishing for trout and the potential for hooking mortality on trout during the closed season.

Section 5.00(b)(5), is in direct conflict with Section 7.00(b)(7). Section 5.00 (b)(5), Title 14, CCR, states that all waters of Mono County are open to black bass fishing all year while Section 7.00 (b)(7), states that Mono County waters are closed to all fishing when closed to trout fishing, except for unrestricted portions of Fish Slough which are open to fishing all year.

These proposed regulations will close the streams in the southwest portion of Inyo County (Section 7.00(b)(2), to black bass fishing when the trout season is also closed and align the Mono County regulations in sections 5.00(b)(5) and 7.00 (b)(7). These proposed regulation changes clarify conflicting regulations, reduce public confusion, and improve enforceability of the regulations.

Also in Inyo County, Haiwee Reservoir listed in sections 5.00(b)(16) and 7.50(b)(73.5), was closed by the Los Angeles Department of Water and Power (LADWP) to all public access, including fishing. This closure eliminates take—concerns outside of the general regulations and existing regulations could cause confusion for the public that the Haiwee Reservoir Special Fishing regulations may supersede LADWP’s authority regarding trespass on LADWP lands. This proposed regulation is to remove Haiwee Reservoir from sections 5.00(b)(16) and 7.50(b)(73.5), to allow it to be covered under general fishing regulations and revise Section 7.50(b)(68.3), due to the renumbering of Section

5.00(b). This proposed regulation change will clarify conflicting regulations and reduce public confusion.

In Shasta County, Section 5.00(b)(7), allows for a year round black bass open season, while Section 7.00(b)(4), limits the fishing season on Big Lake to the last Saturday in April through November 15. Big Lake clearly falls into the seasonal closure specified in Section 7.00(b)(4). The prevalent public view has been that Big Lake is open year round to the taking and possession of black bass. Big Lake is fed by a series of artesian springs along its north shore in the vicinity of Ahjuma-wi Lava Springs State Park. The water temperature in winter months is warmer where the water flows from these springs and largemouth bass use this area as a thermal refuge. Local anglers have discovered this phenomenon and have been targeting largemouth bass during the fishing closure specified in Section 7.00 (b) (4). This regulation proposal is to remove Big Lake from the Shasta County black bass regulations in Section 5.00(b)(7) and place it in the Individual Bodies of Water section under a new Section 5.00(b)(9) with a season that runs from the last Saturday in April through November 15. This proposed regulation changes clarify conflicting regulations, reduce public confusion, and improve enforceability of the regulations.

In Modoc County, Big Sage Reservoir is incorrectly identified as “Sage Reservoir” in Section 5.00(b)(4). The Big Sage Reservoir is the only correct name as shown on the Modoc National Forest and United States Geological Survey Quad series maps. This proposed regulation change would change the name to Big Sage Reservoir to provide consistency with identification of this body of water.

Minor changes are proposed to improve the clarity of the regulations.

**Amend subsection (b), Section 7.00 And subsections (b)(38), (b)(78), (b)(103.5), (b)(134), (b)(141), (b)(196), (b)(198), (b)(205), (b)(211), Section 7.50
Re: Sierra District Catch and Release Winter Trout Season**

In 2004, the Fish and Game Commission (Commission) established an open winter season (November 16 through the Friday preceding the last Saturday in April) for 38 miles of the Upper Sacramento River with a zero-bag limit and restrictions to artificial lures with barbless hooks. For the past two winters, the open season on the Upper Sacramento River has been well received by the local communities and has been popular among trout anglers. Surveys indicated that almost two-thirds of the anglers traveled more than 75 miles to fish the Upper Sacramento winter season. The Department of Fish and Game (Department) has recognized

that there is an interest for additional trout fishing opportunity in the winter months.

Consistent with the Department's Mission and the Strategic Plan for Trout Management, these proposed regulations are intended to improve and enhance trout fishing opportunities. In addition, Fish and Game Code Section 1727(b) directs the Department to: "...Consider making proposals for zero-limit trout fisheries during seasons otherwise closed by the Commission." The Department's Fisheries Management Committee has recommended pursuing additional opportunities for anglers to fish the winter season on Sierra District streams that have been closed in the past.

Fishery managers have determined that winter season catch-and-release trout fishing with artificial lures and barbless hooks has insignificant, often undetectable impacts to trout populations. Already low hooking mortality rates with artificial lures may be further diminished in winter due to cooler water temperatures. Department surveys conducted on the Upper Sacramento River during the 2004-2005 winter season estimated incidental hooking mortality of only 242 trout for the 38 miles of stream. Many "Blue Ribbon" streams and trout streams of national significance in the mountainous regions of other western states continue to provide winter season fisheries.

This proposal recommends the establishment of catch-and-release winter season fisheries for a selection of Sierra District streams listed in sections 7.50 and 7.00, Title 14, California Code of Regulations (CCR). These streams are:

1. American River and tributaries, Section 7.00(b)(6)
2. East Fork Carson River, Section 7.50(b)(38)
3. Hot Creek, Section 7.50(b)(78)
4. Little Truckee River, Section 7.50(b)(103.5)
5. Upper Owens River, Section 7.50(b)(134)
6. Pit River, Section 7.50(b)(141)
7. Truckee River, Section 7.50(b)(196)
8. Tuolumne River, Section 7.50(b)(198)
9. East Walker River, Section 7.50(b)(205)
10. North Fork Yuba River, Section 7.50(b)(211)

Along with the proposed winter season fishery on the Tuolumne River (Section 7.50(b)(198)), the Department recommends a minor change to simplify the size limits (which apply to the existing open season) and make them consistent with the fishery management goal for this river. This proposal would change the existing 12-inch minimum size limit to a 12-inch maximum size limit for a 12-mile reach of the Tuolumne River. This simplifying change makes both size limits consistent with the goal of providing "trophy-size" wild trout angling. Both river reaches would continue to

have a two-trout limit during the last Saturday in April through November 15 season.

Also, along with the proposed winter season fishery for the North Fork Yuba River (Section 7.50(b)(211)), the Department recommends eliminating the 10-inch minimum size limit which applies during the existing open season. This stretch of the river has a two-trout bag limit, is managed primarily for wild trout, and has a low harvest rate. The Department believes that the reduced bag limit with gear restrictions is sufficient to maintain a quality wild trout fishery. Allowing anglers to take two trout less than 10 inches will not significantly impact the population, making the 10-inch minimum size restriction unnecessary.

Minor changes are proposed to improve the clarity of the regulations.

Amend Subsections 7.00(c)(3) and (f)(5) Re: North Central Coast and Southern Districts General Regulations

Currently Section 7.00(c)(3), Title 14, California Code of Regulations (CCR), states the tide waters of all streams except those listed by name in the Special Regulations are closed to fishing all year in the North Central District. If a person were to only look at this section in the regulations, without first looking at sections 6.32, 1.53 and 27.00, they would think the tide waters of all streams in this district were closed to fishing.

Additional language needs to be added to this section referring readers to look at the definition of inland waters as well as the definition of the Ocean and San Francisco Bay District. Once these two definitions are read it is clear that the tide waters of streams entering into the Ocean and San Francisco Bay district waters are open to fishing.

There are several popular fishing areas along rivers that have tidal waters within the North Central District. By adding a sentence directing readers to these two definitions, it would clarify what tidal influenced waters were open to fishing for both the public and enforcement officers.

Currently Section 7.00(f)(5), Title 14, CCR, has Robles Diversion Dam as the upper limit of anadromy on the Ventura River. A fish ladder and fishway for passing federally-endangered Southern steelhead was completed on the Robles Diversion Dam in Fall, 2003 through a joint effort by the Bureau of Reclamation, Casitas Municipal Water District (CMWD), National Marine Fisheries Service (NMFS), California Coastal Conservancy and the Department. In Spring, 2005, Cal-Trout requested that the Commission consider adoption of an emergency regulation change closing the waters between the Robles Diversion and the next barrier to anadromy, which is located at the Wheeler Gorge

Campground in the Los Padres National Forest. In Summer, 2005, Department staff conducted snorkel surveys of the area and found numerous juvenile and adult trout but found no evidence of ocean-run fish. In Spring, 2006, CMWD biologists submitted video evidence to the Department and NMFS showing adult steelhead passing through the fish ladder following several storm events. The video images have been verified to be adult steelhead returning to the Ventura River from the ocean by NMFS and Department staff.

Section 7.00(f)(5) allows trout to be taken for sport in all streams and tributaries (except those listed by name in the Special Regulations) above Twitchell Dam on the Cuyama River, above Bradbury Dam and below Gibraltar Dam on the Santa Ynez River, Robles Diversion on the Ventura River, and Rindge Dam on Malibu Creek. Current regulation also specifies the season and bag limit.

The proposed regulatory change will expand the closed waters on the Ventura River from the Robles Diversion to the base of Matilija Dam on Matilija Creek and to the Wheeler Gorge Campground operated by the United States Forest Service on North Fork Matilija Creek in Ventura County. The change will result in approximately 4 miles of stream being closed for the protection of Southern steelhead, which is listed as a federally-endangered species. This change will also make the freshwater sport fishing regulations consistent with the Endangered Species Act and the critical habitat designation on the Ventura River established by the Department of Commerce in August, 2005.

Minor changes are proposed to improve the clarity of the regulations.

**Amend subsection (b)(14), Section 7.50
Re: Battle Creek Fishing Regulations**

Currently the Battle Creek regulations, subsection (b)(14), Section 7.50, Title 14, California Code of Regulations (CCR), allow the take of one hatchery trout or hatchery steelhead from the last Saturday in April through September 30 from 250 feet upstream of the Coleman National Fish Hatchery (CNFH) to the Coleman powerhouse. Because of changes to fish management practices in Battle Creek, CNFH personnel no longer allow fish to pass the CNFH into upper Battle Creek. Therefore, the regulation allowing the take of one hatchery fish upstream of CNFH is not required.

The proposed regulations will reduce the bag limit to zero, extend the fishing season to November 15 to allow for catch and release fishing opportunities, and specify the entire anadromous reach of Battle Creek. This change will protect steelhead in Battle Creek, which are a federally listed threatened species, help reduce public

confusion, eliminate an ongoing enforcement problem, and remove obsolete regulatory language.

On the first day of the 2006 trout season, wardens contacted a group of anglers who retained five steelhead above the Coleman powerhouse where fishing is closed. These fish could represent up to 5% of the steelhead run in Battle Creek based on weir counts for 2006, though it is likely that other steelhead may have entered Battle Creek undetected. The anglers made a compelling argument that they did not clearly understand the regulations.

Clarification of the regulations will help anglers clearly understand the intent for Battle Creek, reduce illegal fishing activity, and assist enforcement efforts. Additional minor changes are proposed to improve the clarity of the regulations.

**Amend subsections (b)(17) and (b)(55),
Section 7.50**

Re: Bear and Deep Creek Trout Size Limits

Existing regulations for two Southern District streams, Bear Creek and Deep Creek in the San Bernardino Mountains, include a minimum size limit of 8 inches for trout.

More than 15 years ago, 8-inch minimum size limits were established in two Southern District streams, Bear Creek and Deep Creek in the San Bernardino Mountains. Department fish population and angler surveys reveal that angler harvest of trout is so low that minimum size restrictions do not affect these fish populations and no longer serve a desired fishery management purpose. Removing these unnecessary size restrictions simplifies the angling regulations.

The proposed regulatory change would removal these existing minimum size limits. The bag limit on both streams is 2 trout and the Department has determined that harvest rate of trout is low and that these 8-inch minimum size restrictions do not affect the fish populations. The minimum size restrictions no longer serve a useful fishery management purpose and the Department recommends their removal to simplify these regulations.

**Amend subsection (b)(63), Section 7.50
Re: Eel River Fishing Regulations**

Currently the Eel River regulations, subsection (b)(63), Section 7.50, Title 14, California, Code of Regulations (CCR), has different wording to describe the same Van Duzen River section than the Low Flow Regulations, subsection (a)(3), Section 8.00, Title 14, CCR. This proposed change would align the language used for these two regulation sections and provide consistency with the rest of subsection (b)(63), Section 7.50 reg-

ulations which describe the river sections from a downstream location to an upstream location.

This proposed change reduces public confusion and improves enforceability of the regulations.

**Amend subsection (b)(118), Section 7.50
Re: Merced River Fishing Regulations**

Currently the Merced River regulations, subsection (b)(118), Section 7.50, Title 14, California Code of Regulations, refers to the Schaffer Bridge on Montpelier Road. Shaffer Bridge is on Oakdale Road not Montpelier Road. In Stanislaus County the road is called Montpelier Road, however, in Merced County the name of the same road becomes Oakdale Road. This reference needs to be corrected in order to alleviate public confusion and ensure that the regulation is enforceable in court.

**Amend subsection (b)(180), Section 7.50
Re: Smith River Fishing Regulations**

Currently the Smith River regulations, subsection (b)(180), Section 7.50, Title 14, California Code of Regulations, could be misconstrued to allow for the harvest of five wild Smith River steelhead from each river section (Main stem, Middle Fork, South Fork, and North Fork). The proposed regulation will clarify that the yearly bag limit is a total of five wild Smith River steelhead for the entire Smith River.

This proposed change reduces public confusion and improves enforceability of the regulations.

**Amend Section 27.65
Re: Rockfish Fillet Provisions**

Depending on the species taken and the fishing location, recreational anglers may fillet their fish while fishing aboard vessels as described in regulations of Section 27.65, Title 14, CCR. Special regulations for filleting are needed so that other regulations defining minimum size limits are enforceable. Once a fish is filleted, it is often difficult or impossible to determine what species of fish the fillet originated from. Without special fillet regulations, individuals would be able to fillet fish at sea that were not of minimum size, and avoid enforcement of those limits when returning to port.

A minimum fillet size is provided for most species for which there is a minimum size limit, and regulations also specify additional requirements including how much skin must be left attached to the fillet, so that the species of fish can be readily identified.

Recreational anglers, and particularly the Commercial Passenger Fishing Vessel (CPFV) fleet, often prefer to fillet their catch at sea to ease waste disposal issues and to preserve the quality of the catch.

Subsection (b)(8) specifies the fillet rules for rockfish. Bocaccio is the only species of rockfish that has a minimum size limit (10 inches), and the corresponding minimum fillet size is five inches. Present regulations in this subsection, however, also require a 6.5-inch minimum size for "brown-skinned" rockfish fillets.

Rockfish, and particularly rockfish fillets, look very similar in appearance to kelp bass fillets, and can easily be confused. Kelp bass have a minimum size limit of 12 inches and a corresponding fillet size limit of 6.5 inches. Therefore, to ensure the minimum size limit for kelp bass was adhered to, regulations were also needed for rockfish fillet sizes.

However, when those regulations for kelp bass and rockfish fillets were established many years ago, there was no requirement that the skin be left intact on the entire rockfish fillet. At that time, the regulations required only that rockfish fillets have a one-inch by one-inch patch of skin left attached to the fillet.

In 2004, the regulations in (b)(8) for rockfish fillets were amended, and the skin patch requirement was eliminated in favor of the requirement that all rockfish fillets must have the entire skin left attached. This change was needed to improve identification of rockfish species, which became increasingly important for enforcement staff to be able to do, given new regulations that prohibit retention of certain species of rockfish such as cowcod, canary and yelloweye rockfish.

However, when that 2004 amendment was made, the requirement that all "brown skinned" rockfish fillets must be 6.5 inches was inadvertently left in place. Today, the regulation no longer serves its intended purpose, since there is no longer any potential confusion between bass fillets and rockfish fillets, since rockfish fillets now must have the entire skin intact.

The "brown-skinned" regulation has also proven to be vague and confusing to the public and enforcement staff alike, given that there is no definition of "brown skinned rockfish" provided in any regulation of Title 14. Because rockfish often have varying color patterns that are shades of brown, red, orange, gray, copper and pink, there is no distinct measure of which rockfish are "brown skinned" and which are not.

Moreover, the regulation has proven to be burdensome for anglers who wish to fillet their rockfish that are "brown skinned" but are of a size that cannot produce a fillet that is at least 6.5 inches long. This is most often the case for squarespot, gopher and calico rockfish, which are species which would almost certainly be classified as "brown skinned," yet are generally small. Consequently, in practice, these fish are often released or discarded in exchange for a fish that can legally be filleted at sea, although the fish is otherwise legal to retain.

Based on the aforementioned reasons, the Department recommends the Commission remove the requirement that “brown skinned” rockfish fillets be 6.5 inches in length, as the regulation is no longer necessary for ongoing protection of the kelp bass resource, is needlessly confusing and vague, and is likely adding to rockfish discard rates.

Amend Section 28.20

Re: Pacific Halibut Season and Size Limit

Regulations of Section 28.20, Title 14, CCR, specify a season, bag limit, and a 32-inch minimum size limit for Pacific halibut for California’s recreational fishery. The Department proposes the Fish and Game Commission amend these regulations to make them consistent with new federal regulations established by the International Pacific Halibut Commission (IPHC) that became effective for federal waters off California (beyond three miles) in March of 2006.

The proposed change would extend the open sport-fishing season for Pacific halibut one month, so that fishing would be permitted from May 1 through October 31 each year. Additionally, the IPHC has eliminated the minimum size limit in federal waters off California. This was done because the original intent of the size limit was to slow catch rates, and under present biomass levels and management strategies, there is not a need to slow catch rates in the recreational fishery off California.

Pacific halibut are primarily targeted off Alaska, Washington and Oregon, where they are more abundant, and northern California is the southernmost portion of their range. In California, Pacific halibut are a species that are generally taken incidental to other fisheries, and occur only rarely in sport catches. Between 1980 and 2005, only 21 Pacific halibut were observed statewide by creel census samplers who work year-round surveying sport-caught fish at all major marine recreational fishing sites in California. Moreover, during the same time period, anglers only reported catching 13 Pacific halibut that were released.

The Department is aware of only a few small charter businesses that target Pacific halibut in the Fort Bragg and Crescent City areas. However, extension of the open season and elimination of the minimum size limit might allow for minor increases in fishing opportunity for this species in northern California.

Amend Section 29.70

Re: Recreational Limit on Jumbo and Market Squid

While they have been a focus of sport and commercial fisheries off northern Mexico for many years, in

California, jumbo squid (*Dosidicus gigas*) primarily have been taken only incidental to other recreational fisheries. However, in the past few years, jumbo squid appear to be increasingly prevalent off California, and accordingly have become a growing target for the State’s recreational anglers. They can span up to six feet in length and weigh over 100 pounds, and are taken off-shore by both private boats as well as the Commercial Passenger Fishing Vessel (CPFV) fleet.

As a result of increased fishing activity directed toward this resource, anglers have sought clarification from Department wardens and biological staff as to the bag limit on jumbo squid. Section 29.70 specifies that there is no recreational limit on “squid”. Meanwhile, Section 29.05 specifies a “general invertebrate” limit of 35, which applies for any invertebrate species where a bag limit is not otherwise specified.

When one refers to “squid” in California waters, the term is commonly understood to mean the market squid, *Loligo opalescens*, which is readily abundant and is often used as bait for other game species in California waters. It is also the target of one of California’s largest commercial fisheries.

Because no bag limit is specified for jumbo squid, anglers have sought clarification whether Section 29.70 applies to the take of jumbo squid, or if the general invertebrate limit of 35 is the regulation that governs. To clarify this situation, the Department proposes that the regulatory text of Section 29.70 be amended to specify that there is no limit on either jumbo squid or market squid.

Amend Section 29.80

Re: Take of Crustaceans While Diving

Existing regulations of Section 29.80, Title 14, CCR, govern the recreational take of crustaceans while skin diving or while using SCUBA gear. Subsection (a) provides a general allowance that crustaceans may be taken by hand, while subsection (g) states that “skin and SCUBA divers may take crustaceans by the use of the hands except divers may not possess any hooked device while diving or attempting to dive.” The Department proposes to clarify this language to reduce confusion and improve enforcement of the regulations in this Section.

The intent of the prohibition on hooking devices is to ensure that divers do not use gaffs to reach into crevices in order to remove lobsters or crabs in areas out of reach. However, while divers may not possess hooked devices, the regulation fails to clearly state that skin and SCUBA divers may take crustaceans only by hand. The use of objects such as sticks, spears, or mops is known to improve efficiency and productivity for crustaceans while diving, thereby increasing catch rates.

The Department proposes that the Commission amend subsection (g) of Section 29.80, to make clear

that skin and SCUBA divers may take crustaceans by hand only. The change will improve the ability to enforce the requirement that divers take crustaceans by hand, and will also improve clarity and reduce confusion for the public.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Hubbs–Sea World Research Institute, Shedd Auditorium, 2595 Ingraham Street, San Diego, California, on Friday, October 6, 2006 at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the City Council Chambers, 777 Cypress Avenue, Redding, California, on November 3, 2006, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments may be submitted on or before Friday, October 27, 2006 at the address given below, or by fax at (916) 653–5040, or by e–mail to FGC@dfg.ca.gov, but must be received no later than Friday, November 3, 2006 at the hearing in Redding. All correspondence, including E–mail, must include the true name and mailing address of the commenter.

NOTICE IS FURTHER GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Santa Monica Library, Martin Luther King Jr. Auditorium, 601 Santa Monica Blvd., Santa Monica, CA, on December 8, 2006, at 8:30 a.m., to consider adoption of the proposed Sport Fishing Regulations for the 2007 through 2009 seasons. Additional testimony on the proposed regulations may be received if substantive changes result from the November 3, 2006, meeting or if regulatory alternatives are under consideration.

Draft environmental documents associated with the proposed regulatory actions are made available for comment commencing September 13, 2006. Oral or written comments relevant to these documents will be received at the October 6, 2006, meeting in San Diego. Written comments on these documents may be submitted to the Commission office (address given herein) until 5:00 p.m., November 7, 2006. Draft environmental documents are available for review at the Commission office and at the Department of Fish and Game's headquarters office (same address as Commission). Copies of the documents are also available for review at the Department offices in Redding, Rancho Cordova, Yountville, Fresno, Bishop, Eureka, Menlo Park, Monterey, Ontario and San Diego. **NO WRITTEN COMMENTS ON THE DRAFT ENVIRONMENTAL DOCUMENTS WILL BE ACCEPTED AFTER 5:00 P.M. ON NOVEMBER 7, 2006.**

The regulations as proposed in ~~strikeout~~–underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244–2090, phone (916) 653–4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Jon D. Snellstrom at the preceding address or phone number. **Scott Barrow, Department of Fish and Game, phone (916) 651–7670, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15–day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

**Sections 1.62, 5.80, 27.60, 27.90, 27.95, 195, and 701;
Add Sections 5.81 and 27.91**

Re: Sturgeon Sport Fishery Regulations

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed amendments and additions will promote a more stable and productive fishery, with direct benefits to anglers, guides, and bait shops.

Section 1.63

Re: Movement of Live Fish

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulation clarifies existing regulations.

Section 1.67

Re: Native Reptiles and Amphibians

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. A fundamental concept of state regulations concerning native wildlife is that commercialization is not the norm. This amendment closes loopholes centering on activity that commercializes species and subspecies indigenous to California. However, based on traditional California law the commercialization of native reptiles and amphibians is extremely limited and is a very minor part of the California economy. Additionally, present permit processes would let authorized commercial activity to take place within California.

Section 2.00

Re: Fishing Methods — General

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulation change clarifies existing regulations.

**Sections 5.00 and Subsections 7.50(b)(68.3) and
Repeal Subsection 7.50(b)(73.5)**

**Re: Black Bass Seasons in Inyo, Shasta, Modoc, and
Mono Counties and Repeal of Haiwee Reservoir
Special Fishing Regulations**

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. These regulation changes simply clarify existing language and remove any angler perceived loopholes. No economic impacts are anticipated.

**Subsection (b), Section 7.00 And subsections (b)(38),
(b)(78), (b)(103.5), (b)(134), (b)(141), (b)(196),
(b)(198), (b)(205), (b)(211), Section 7.50**

**Re: Sierra District Catch and Release Winter Trout
Season**

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. There may be modest, localized economic benefits for communities from expenditures by anglers, typically, for purchases of lodging, food, fuel, fishing tackle, etc.

Subsections 7.00(c)(3) and (f)(5)

**Re: North Central Coast and Southern Districts
General Regulations**

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations clarify existing regulations and increase protection for federally-endangered Southern steelhead and their progeny.

Subsection (b)(14), Section 7.50

Re: Battle Creek Fishing Regulations

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed change is required since hatchery steelhead are no longer allowed to pass upstream of the hatchery.

Subsections (b)(17) and (b)(55), Section 7.50

Re: Bear and Deep Creek Trout Size Limits

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. There is no economic impact resulting from repealing these minimum size restrictions.

Subsection (b)(63), Section 7.50

Re: Eel River Fishing Regulations

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulation simply clarifies existing regulations.

Subsection (b)(118), Section 7.50

Re: Merced River Fishing Regulations

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulation change clarifies existing regulations.

Subsection (b)(180), Section 7.50

Re: Smith River Fishing Regulations

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulation change clarifies existing regulations.

Section 27.65

Re: Rockfish Fillet Provisions

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

No significant adverse impacts. Eliminating the requirement that "brown skinned" rockfish fillets be 6.5 inches in length will aid enforcement, public understanding and reduce confusion. The change is minor and technical in nature.

Section 28.20

Re: Pacific Halibut Season and Size Limit

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. If there is any economic impact that might result from the proposed change, it would be positive in nature.

Section 29.70

Re: Recreational Limit on Jumbo and Market Squid

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed change makes only a

non-substantive, technical change to the regulations, to aid public understanding and reduce confusion.

Section 29.80

Re: Take of Crustaceans While Diving

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Modifying the language to clarify that while diving with SCUBA gear, take of crustaceans is authorized "by hand only" makes only a non-substantive, technical change to the regulations, to aid enforcement, public understanding and reduce confusion.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business:

**Sections 1.62, 5.80, 27.60, 27.90, 27.95, 195, and 701
Add Sections 5.81 and 27.91**

Re: Sturgeon Sport Fishery Regulations

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action, other than the \$0-\$7.50 fee for the Sturgeon Fishing Report Card.

Section 1.63 Re: Movement of Live Fish; Section 1.67 Re: Native Reptiles and Amphibians; Section 2.00 Re: Fishing Methods — General; Sections 5.00, Subsections 7.50(b)(68.3), Repeal Subsection 7.50(b)(73.5), Re: Black Bass Seasons in Inyo, Shasta, Modoc, and Mono Counties and Repeal of Haiwee Reservoir Special Fishing Regulations; Subsections 7.00(c)(3) and (f)(5) Re: North Central Coast and Southern Districts General Regulations; Section 27.65 Re: Rockfish Fillet Provisions; Section 28.20 Re: Pacific Halibut Season and Size Limit; Section 29.70 Re: Recreational Limit on Jumbo and Market Squid; Section 29.80 Re: Take of Crustaceans While Diving

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

**TITLE 17. CALIFORNIA AIR
RESOURCES BOARD**

**NOTICE OF PUBLIC HEARING TO
CONSIDER AMENDMENTS TO THE
DISTRIBUTED GENERATION
CERTIFICATION REGULATION**

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider adoption of amendments to the Distributed Generation (DG) Certification regulation.

DATE: October 19, 2006
 TIME: 9:00 a.m.
 PLACE: California Environmental Protection
 Agency
 Air Resources Board
 Byron Sher Auditorium
 1001 I Street
 Sacramento, CA 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., October 19, 2006, and may continue at 8:30 a.m., October 20, 2006. This item may not be considered until October 20, 2006. Please consult the agenda for the meeting, which will be available at least 10 days before October 19, 2006, to determine the day on which this item will be considered.

For individuals with sensory disabilities, this document is available in Braille, large print, audiocassette, or computer disk. Please contact ARB's Disability Coordinator at 916-323-4916 by voice, or through the California Relay Services at 711, to place your request

for disability services. If you are a person with limited English and would like to request interpreter services, please contact ARB's Bilingual Manager at 916-323-7053.

**INFORMATIVE DIGEST OF PROPOSED ACTION
AND POLICY STATEMENT OVERVIEW**

Sections Affected: Proposed amendments to title 17, California Code of Regulations, sections 94201, 94201.1, 94203, 94204, 94207, 94208, 94209, 94210, 94211, and 94212.

Background:

Distributed generation refers to replacing or supplementing electricity from the grid with electrical generation sources that are located near the place of use. Some examples of electrical generation technologies are engines, turbines, fuel cells, and photovoltaic cells. Some businesses choose to operate distributed generation technologies with heat recovery systems that capture the heat produced from the electrical generation process. This captured heat can then be used to heat water, provide steam or space heating, or power a chiller at the facility. Distributed generation can be used at various types of businesses such as hospitals, schools, libraries, breweries, utilities, and laundries.

Senate Bill (SB) 1298 (Stats. 2000, ch. 741) required the ARB to establish a distributed generation certification program for electrical generation technologies that are exempt from local air district permits. SB 1298 mandated that ARB establish at least two levels of emission standards for affected DG technologies. The law required that the first set of standards be effective no later than January 1, 2003, and reflect the best performance achieved in practice by existing DG technologies that are exempt from district permits. The law also required that, by the earliest practicable date, the standards be made equivalent to the level determined by ARB to be the best available control technology (BACT) for permitted central station power plants in California. The emission standards were to be expressed in pounds per megawatt hour (lb/MW-hr) to reflect the efficiencies of various electrical generation technologies.

Pursuant to SB 1298, the Board adopted a DG Certification regulation in 2001. The ARB staff proposed interim standards for 2003 and recommended that 2007 be considered the earliest practicable date for DG applications to meet central power plant emissions standards. In addition to establishing emission standards, the DG Certification regulation included testing protocols, calculation procedures, and other specified requirements that manufacturers must satisfy to certify DG technologies.

Generally, microturbines up to 250 kilowatts (kW), engines less than 50 horsepower (hp), and fuel cells are exempt from district permits. Although small engines are exempt from district permits, most engines used in distributed generation applications are larger than district permit exemption levels and therefore require district permits. Consequently, the regulation has so far only affected fuel cells and microturbines. These types of technologies were just entering the California market when the Board adopted the DG Certification regulation in 2001.

Because of uncertainties at the time regarding the development and deployment of these DG technologies, the regulation includes a requirement for a technology review within a few years to evaluate the status of the DG certification program and determine if revisions were warranted. The technology review was to address the feasibility of the 2007 standards, the credit given for utilizing combined heat and power (CHP)* to meet these standards, emissions durability, and test methods and procedures. Evaluating these specific requirements was the primary focus of ARB staffs evaluation; however, ARB staff also evaluated other additions and changes to the regulation during the review. Staff's proposed amendments are a result of that review process.

DESCRIPTION OF THE PROPOSED REGULATORY ACTION

Emissions Durability and Testing Requirements

The proposed amendments would require manufacturers of DG units, when preparing the application package, to identify key components of the DG unit that are most critical to ensuring compliance with the certified emission limits, such as fuel injectors, rotors, seals and bearings for a microturbine, and fuel cell stacks and catalysts for fuel cells. In addition, the manufacturer would be required to keep records relating to how often these components are replaced and submit the records to ARB upon request. In this manner, ARB staff will be able to track durability of equipment in the field.

Staff is proposing a number of changes to the testing requirements and parameters to improve and clarify the testing requirements and better reflect actual in-the-field operations of affected technologies. The proposed amendments would require manufacturers to test at

only 100 percent load versus the three-load testing that is currently required because staff has determined that certified DG technologies are generally operated at only full capacity in the field. VOC testing would now be conducted using South Coast Air Quality Management District test method 25.3 to more accurately measure emissions at the low concentrations expected from certified technologies. To reduce recordkeeping and testing requirements for the manufacturers, they would no longer be required to test each individual DG unit for NOx emissions prior to commercial use. For clarification purposes, manufacturers would now be required to use a specific method to calculate recoverable heat if a CHP credit is being used to meet a standard. And, finally, the generator output measured during the source test would be based on net power output, not the gross output of the unit, to more accurately represent the actual available power from the unit.

Addition of Waste Gas Emission Standards

The proposed amendments would add requirements to enable technologies fueled with waste gases (landfill, digester, and oil-field waste gases) to be certified under this program. The current regulation, although allowing for fuels other than natural gas to be used for certification, does not contain a practical method in which to accomplish this. The composition of waste fuels varies from site to site and season to season, which makes it challenging to issue statewide certifications on these variable fuels. Therefore, local air districts have had to issue permits to otherwise permit-exempt equipment. The ARB staff proposes to bring these waste-gas applications into the DG certification program where they appropriately belong. Both the local air districts and the manufacturers support integrating waste gas applications into the certification program.

To certify these permit-exempt waste-gas applications, ARB staff has developed surrogate fuel compositions based on data submitted to the ARB for landfill gases, digester gases, and oil-field waste gases. Manufacturers would be required to use these surrogate gases for certification testing.

Staff is proposing two sets of waste gas standards, much like what is currently in the regulation. Staff is proposing 2008 interim waste-gas standards that are similar to the current 2003 limits. Unlike the 2003 standards, the waste-gas 2008 standards would not include a particulate matter (PM) standard nor would they include a separate, less stringent, set of limits for units integrated with CHP. A PM standard is not being proposed because the impurities in waste gas that would contribute to PM emissions will be removed prior to being used with DG units in the field. Staff is not proposing to include less stringent 2008 limits for units integrated with CHP because manufacturers would now

*Combined heat and power (CHP) refers to the total amount of useful energy obtained from the DG equipment. It is the sum of the electrical output of the unit plus the amount of waste heat utilized in a productive manner, such as heating water or providing heat to industrial processes. These combined energy outputs are used to calculate the total megawatt-hours produced, and are therefore used when determining the emissions in pounds per megawatt-hour.

only have to test at 100 percent power load, which should allow them to meet the more stringent limits.

The proposed 2013 waste-gas standards are identical to the current 2007 limits, except for the omission of a PM standard as described above. The 2013 standards reflect central station power plant emissions, as required in SB 1298. As with the 2007 standards, a manufacturer can use a CHP credit to meet the 2013 standards if the unit is integrated and sold with a heat recovery system and can achieve a minimum overall efficiency of 60 percent. The proposed waste-gas emission standards are presented in Table 1.

Table 1: Proposed Waste Gas Emission Standards

Pollutant	Emission Standard (lb/MW-hr)	
	On or after January 1, 2008	On or after January 1, 2013
NO _x	0.5	0.07
CO	6.0	0.10
VOCs	1.0	0.02

Other Amendments

The proposed amendments would clarify that the current 2007 standards apply only to natural gas and liquefied petroleum gas (LPG) units and would define LPG. In addition, staff proposes elimination of the PM standard in the current 2007 emission standards because staff has determined that it is unnecessary for these gaseous fuels to have a PM standard.

The proposed amendments would change the fee structure of the program to fully cover costs to the State to implement this program, as allowed by SB 1298. Initial certification application fees under the proposed amendments would increase \$5,000 from \$2,500 to \$7,500 to better reflect the average 60 hours the ARB staff has needed to review and process certification applications to date.

To provide an economic incentive for early introduction of the cleanest waste-gas-fueled DG technologies, manufacturers of technologies that can meet the 2013 standards by January 1, 2008 (such as fuel cells), would be exempt from submitting an initial application fee.

The current fee assessment for recertification is \$2,500. The ARB staff proposes maintaining that fee for DG units that do not require a source test for recertification but assessing a fee of \$7,500 for DG units that require a source test for recertification. These fees are based on staff time estimates of about 20 hours for applications that do not contain source test results, and about 60 hours to process applications that do contain source test results.

Currently, applicants seeking voluntary certification for DG technologies that do not emit an air contaminant are not charged any application fee. The ARB staff proposes that a fee of \$2,500 be assessed for manufacturers seeking voluntary certification. To date, ARB has not received any applications for voluntary certifications.

Since the waste-gas emission standards are five years apart (2008 and 2013) ARB staff is proposing that certifications issued to units meeting the 2008 standards on waste gas be valid for five years or to January 1, 2013, whichever comes first. For consistency, staff is proposing expansion of the duration of certifications based on the 2007 natural-gas standards from four years to five years as well.

ARB staff is proposing expansion of the allowable exemptions to the regulation to include units operated by the manufacturer for quality assurance testing, and units that are part of a research operation that the Executive Officer has approved. Staff is also proposing a clarification that all portable electrical generation technologies are exempt from this program, not just those that are registered in ARB's Portable Equipment Registration Program. These other portable DG units are already regulated under other ARB and United States Environmental Protection Agency (U.S. EPA) programs.

ARB staff is proposing the Board modify the inspection and enforcement provisions in the regulation, modify and add terms in the definitions section, and make other editorial changes throughout the regulation. These changes are considered to be non-substantive and are intended to improve and clarify the DG Certification regulation.

COMPARABLE FEDERAL REGULATIONS

The certification program that staff is proposing to the Board amend is not required by federal law or regulation. There are no comparable federal regulations covering the certification of emissions from small DG technologies.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: "Staff Report: Initial Statement of Reasons for the Proposed Amendments to the Distributed Generation Certification Regulation."

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on the ARB's web site listed below, or

may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing on October 19, 2006.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the ARB's web site listed below.

Inquiries concerning the substance of the proposed amendments may be directed to the designated agency contact persons: Michael Waugh, Manager of the Program Assistance Section, Project Assessment Branch, Stationary Source Division at (916) 445-6018, and Dave Mehl, Air Resources Engineer, Stationary Source Division at (916) 327-1512.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Alexa Malik, Regulations Coordinator, (916) 322-4011. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at www.arb.ca.gov/regact/dg06/dg06.htm.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will not create costs or savings to any State agency or in federal funding to the State, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, or other nondiscretionary cost or savings to State or local agencies.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. The ARB staff has identified six manufacturers that will potentially be im-

pacted by the proposed amendments: the same manufacturers who have already certified their units on natural gas. The overall statewide cost of the proposed amendments is estimated to be \$1,800,000, with an estimated individual business cost of \$135,000 to \$158,000 for each DG model certified (assuming each unit is certified to operate on three waste gas fuels). Businesses will incur costs for conducting an emissions source test on each DG model and waste-gas fuel type to be certified, preparing and submitting a certification application, and paying an application fee.

The ARB staff does not expect complying with the proposed waste-gas standards to cause adverse economic impacts on businesses. ARB staff believes that both fuel cells and microturbines operating on waste gases can currently meet the proposed 2008 standards. Manufacturers should not incur significant adverse economic impacts from complying with the proposed 2013 waste-gas emission standards, as these standards are similar to the 2007 standards with which manufacturers must currently comply for their natural-gas-fueled units. ARB staff believes that fuel cells can currently meet the 2013 standards on waste gases, but that microturbines will need more time to achieve these standards on waste gases. Although the January 1, 2013, compliance date will give manufacturers five years to research and develop new products to meet central station emission limits with waste gases, much of the research and development effort needed to meet the 2013 standards will have already been spent on achieving the 2007 natural gas standard.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will affect small businesses. The ARB staff has identified two out of the six manufacturers that will potentially be impacted by the proposed amendments as small businesses. Both small businesses manufacture fuel cell technologies; however, neither company is in California. These businesses should incur costs of

\$135,000 for each DG unit certified to comply with the proposed 2013 waste-gas standards.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received **no later than 12:00 noon, October 18, 2006**, and addressed to the following:

Postal mail: Clerk of the Board,
Air Resources Board
1001 I Street, Sacramento,
California 95814

Electronic submittal:
<http://www.arb.ca.gov/lispub/comm/bclist.php>

Facsimile submittal: (916) 322-3928

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in Health and Safety Code, sections 39600, 39601 and 41514.9. This action is proposed to implement, interpret, and make specific section 41514.9.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title

2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990.

TITLE 22. DEPARTMENT OF HEALTH SERVICES

ACTION: Notice of Proposed Rulemaking
Title 22, California Code of Regulations
SUBJECT: Perchlorate in Drinking Water, R-16-04

PUBLIC PROCEEDINGS

Notice is hereby given that the California Department of Health Services will conduct a public hearing commencing at 10 a.m. on Monday, October 30, 2006 in the Auditorium, 1500 Capitol Avenue, Sacramento, California, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

All suppliers of domestic water to the public are subject to regulations adopted by the U.S. Environmental Protection Agency (USEPA) under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) as well as by the California Department of Health Services (Department) under the California Safe Drinking Act (Sections 116270-116751, Health and Safety Code [H&S Code]). California has been granted "primacy" for the enforcement of the Federal Act. In order to receive and maintain primacy, states must promulgate regulations that are no less stringent than the federal regulations.

In accordance with federal regulations, California requires public water systems to sample their sources and

have the samples analyzed for inorganic and organic substances in order to determine compliance with drinking water standards, including maximum contaminant levels (MCLs). Primary MCLs are based on health protection, technical feasibility, and costs. The water supplier must notify the Department and the public when a primary MCL has been violated and take appropriate action.

Section 116293(b) of the H&S Code mandates that the Department adopt a perchlorate MCL as close as possible to the public health goal (PHG) established by the Cal/EPA Office of Environmental Health Hazard Assessment (OEHHA), while considering the cost and technical feasibility of treatment and analysis.

This regulation package proposes the following amendments to Chapter 15, Division 4, Title 22 of the California Code of Regulations.

- Amend Section 64413.1 (Classification of Water Treatment Facilities) to include points for perchlorate treatment when calculating the classification of a treatment facility and to update the radionuclide section references, which changed as a result of the radionuclide regulations adopted in June 2006.
- Amend Section 64431 (Maximum Contaminant Levels — Inorganic Chemicals) to adopt a perchlorate MCL and clarify the wording in subsection (a);
- Amend Section 64432 (Monitoring and Compliance — Inorganic Chemicals) as follows:
 - (a) and (b) to specify which water systems are required to monitor for perchlorate and cite the sections that provide the detailed requirements;
 - Table 64432–A to adopt perchlorate with its detection limit for purposes of reporting (DLR);
- Adopt a new section 64432.3 (Monitoring and Compliance — Perchlorate) to establish the monitoring and compliance determination requirements for perchlorate and provide variances for systems unable to afford compliance;
- Adopt a new section 64432.8 (Sampling of Treated Water Sources) to require monthly monitoring of the treated water for sources being treated for compliance with any inorganic MCL;
- Amend section 64447.2 (Best Available Technologies (BAT) — Inorganic Chemicals) to include perchlorate with its best available technology in Table 64447.2–A and list a new technology that is specifically applicable to perchlorate, i.e., biological fluidized bed reactor;

- Repeal section 64450 (Unregulated Chemicals — Monitoring), to eliminate obsolete requirements (the deadline for monitoring has passed); and
- Amend section 64465 (Health Effects Language — Inorganic Chemicals) to adopt health effects language for perchlorate.
- Amend section 64481 (Typical Origins of Contaminants with MCLs) to adopt the typical origins of perchlorate.

The net effects of the proposed regulations would be as follows:

- Community water systems (CWS) and nontransient–noncommunity water systems (NTNCS) would be required to monitor for, and comply with, an MCL for perchlorate;
- CWS and NTNCS unable to afford treatment to comply with the perchlorate MCL would be able to apply for a variance;
- CWS and NTNCS that treat a drinking water source to comply with an inorganic chemical MCL would be required to monitor the treatment effluent monthly;
- CWS and NTNCS that violate the perchlorate MCL would be required to use specific health effects language for the public notification; and
- Best available technologies would be specified for perchlorate removal.

None of the proposed amendments would affect California's primacy status, because the net effect of these amendments is that the state's regulation would be more stringent than the federal regulation, which is allowed. The USEPA has not yet proposed or adopted an MCL for perchlorate.

AUTHORITY

Sections 100275, 116275, 116293(b), and 116375, Health and Safety Code.

REFERENCE

Section 116275, 116293(b), 116385, 116530, and 116535, Health and Safety Code.

COMMENTS

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m. on Friday, November 3, 2006, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1–800–735–2929, if you have a

TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations, Department of Health Services, MS 0015, 1501 Capitol Avenue, P.O. Box 997413, Sacramento, CA 95899-7413. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate; or
2. By fax transmission: (916) 440-7714; or
3. By email to regulation@dhs.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "R-16-04" in the subject line to facilitate timely identification and review of the comment), or
4. By using the "Making Comments on DHS Regulations" link on the Department website at <http://www.applications.dhs.ca.gov/regulations/>.

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

INQUIRIES

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Michael G. McKibben, P.E., Senior Engineer, Standards and Technology Unit, Drinking Water Program, at (619) 525-4023.

All other inquiries concerning the action described in this notice may be directed to Don Lee of the Office of Regulations, at (916) 440-7663, or to the designated backup contact person, Linda Tutor, at (916) 440-7695.

CONTACTS

In any inquiries or written comments, please identify the action by using the Department regulation package identifier, R-16-04.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In

addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at <http://www.applications.dhs.ca.gov/regulations/> and then clicking on the "Select DHS regulations" button.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711/1-800-735-2929), or email regulation@dhs.ca.gov, or write to the Office of Regulations at the address noted above. Upon specific request, these documents will be made available in Braille, large print, and audiocassette or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

FISCAL IMPACT ESTIMATE

- A. Fiscal Effect on Local Government: The first year cost to local government is estimated to be \$666,500. The cost for two subsequent fiscal years is estimated at \$16,970,800 annually, which is based on a 20 year amortization.
- B. Fiscal Effect on State Government: \$11,000.
- C. Fiscal Effect on Federal Funding of State Programs: None.
- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: The estimated annual cost (based on a 20 year amortization) would be \$5,857.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

DETERMINATIONS

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with section 17500) of Division 4 of the Government Code.

However, if they were to incur costs, those costs would be of the following nature:

First, some local agencies would incur costs in their operation of public water systems. These costs would not be the result of a “new program or higher level of service” within the meaning of Article XIII B, Section 6 of the California Constitution because they apply generally to all individuals and entities that operate public water systems in California and do not impose unique requirements on local governments. Therefore, no state reimbursement of these costs would be required.

Second, some local agencies could incur additional costs in discharging their responsibility to enforce the new regulations for the small public water systems (under 200 service connections) that they regulate. However, the Department has determined that any increase in the local agency costs resulting from enforcing this regulation would be insignificant. Furthermore, local agencies are authorized to assess fees to pay reasonable expenses incurred in enforcing statutes and regulations related to small public water systems. (Health and Safety Code Section 101325) Therefore, no reimbursement of any incidental costs to local agencies in enforcing this regulation would be required, Government Code Section 17556(d).

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulations will not significantly affect the following:

1. The creation or elimination of jobs within the State of California. The requirements summarized above should not have any affect in this area in that there would not be any change in water system or regulatory personnel needed for compliance with the proposed requirements.
2. The creation of new businesses or the elimination of existing businesses within the State of California. The nature of the water industry is such that the proposed regulation will not result in the creation or elimination of water systems. The impact of these regulations will be insignificant.
3. The expansion of businesses currently doing business within the State of California. Since water system size is basically a function of the number of service connections (consumers) served, the proposed regulations should not have any affect on expansion.

The Department has determined that the proposed regulations would not affect small business, since Government Code Chapter 3.5, Article 2, section 11342.610

excludes drinking water utilities from the definition of small business.

The Department has determined that the regulations will have no impact on housing costs.

ADDITIONAL STATEMENTS AND COMMENTS

In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Don Lee, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, voice (916) 440-7673 and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

TITLE 24. BUILDING STANDARDS COMMISSION

NOTICE OF PROPOSED CHANGES TO BUILDING STANDARDS OF THE CALIFORNIA BUILDING STANDARDS COMMISSION

REGARDING THE CALIFORNIA BUILDING STANDARDS CODE CALIFORNIA CODE OF REGULATIONS, TITLE 24

Notice is hereby given that the California Building Standards Commission proposes to adopt, amend, repeal, approve, codify, and publish building standards proposed and submitted for the 2006 Annual Code Adoption Cycle of the California Building Standards Code (California Code of Regulations [CCR], Title 24). The California Building Standards Code is comprised of Part 1 (California Building Standards Administrative Code), Part 2 (California Building Code), Part 3 (California Electrical Code), Part 4 (California Mechanical Code), Part 5 (California Plumbing Code), Part 6 (California Energy Code), Part 7 (California Ele-

vator Safety Construction Code), Part 8 (California Historical Building Code), Part 9 (California Fire Code), Part 10 (California Code for Building Conservation), and Part 12 (California Referenced Standards Code).

The building standards being proposed by the California Building Standards Commission, Department of Housing and Community Development, Division of the State Architect, Office of Statewide Health Planning and Development, and the Office of the State Fire Marshal are for incorporation into CCR, Title 24, Parts 1, 2, 3, 4, 5, 9, 10 and 12.

This notice concerns Parts 1, 2, 9, and 12 of CCR, Title 24 as proposed by the agencies listed below. Summaries of the proposed actions and their impacts are listed by proposing agency in the appendix portion of this notice, as follows:

Appendix A	California Building Standards Commission (CBSC)
Appendix B	Department of Housing and Community Development (HCD)
Appendix C	Office of the State Fire Marshal (SFM)
Appendix D	Division of the State Architect, Structural Safety Division (DSA SS)
Appendix E	Division of the State Architect, Access Compliance (DSA AC)
Appendix F	Office of Statewide Health Planning and Development (OSHDP)

WRITTEN COMMENT PERIOD

A public hearing has not been scheduled; however, written comments will be accepted from September 1, 2006 until 5:00 p.m. on October 16, 2006. Comments may be made using the form on CBSC's web site at www.bsc.ca.gov/ and either mailed or faxed to:

California Building Standards Commission
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833
Attention: Thomas L. Morrison,
Deputy Executive Director

Written comments may be faxed to (916) 263-0959 or emailed to CBSC@dgs.ca.gov.

Public Hearing Request

Pursuant to Government Code (GC) Section 11346.5(a)17, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, that a public hearing be held.

Post-Hearing Modifications to the Text of the Regulations

Following the written comment period, CBSC may adopt the proposed building standards substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are made, the full text of the proposed modifications, clearly indicated, will be made available for at least 15 days prior to the date on which CBSC adopts, amends, or repeals the resulting standards. **NOTE:** To be notified of any modifications, you must submit written/oral comments or request that you be notified of any modifications.

AUTHORITY AND REFERENCE

California Building Standards Commission

The California Building Standards Commission proposes to adopt these building standards under the authority of Health and Safety Code (H & SC) §§18934.5 and 18942(b) and Government Code (GC) §14617. The purpose of these building standards is to implement, interpret, and make specific the provisions of H & SC §§18928, 18928.1, 18934.5 and 18938.

Other Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations: CBSC has determined that there are no other matters prescribed by statute applicable to the agency or to any specific regulation or class of regulations.

Department of Housing and Community Development

The CBSC proposes to adopt these building standards under the authority granted by Health and Safety Code Section 18949.5. HCD is proposing this regulatory action based on Health and Safety Code Sections 17040, 17921, 17922, and 19990; and Government Code Section 12955.1. The purpose of these building standards is to implement, interpret, and make specific the provisions of Health and Safety Code Sections 17000-17060, 17910-17990, 18300, 18670, 18865, 18873.3 and 19960-19998; and Government Code Section 12955.1.

Other Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations: None

Office of the State Fire Marshal

CBSC proposes to adopt these building standards under the authority granted by H&SC Section 18949.2 and 18949.3. The purpose of these building standards is to implement, interpret, and make specific the provisions of H&SC Section 13143(a) and 18928(a). SFM is proposing this regulatory action pursuant to H&SC Sections 17921, 18897.3, 13108(a), 13211, 13113, 13113.5, 13114(a), 13132.7, 13133, 13135, 13143, 13143.1(a), 13143.6(a), 13143.9(a).

Other Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations: SFM has determined that there are no other matters prescribed by statute applicable to this agency or to any specific regulation or class of regulation as previously amended and or adopted by the SFM.

Division of the State Architect, Structural Safety Division

The California Building Standards Commission proposes to adopt these building standards under the authority granted by Health and Safety Code Section 18930 and 18949.1. The purpose of these building standards is to implement, interpret, and make specific the provisions of Health & Safety Code Sections 16000–16023, 16600–16604, and Education Code Sections 17280–17317 and 81130–81147. The Division of the State Architect is proposing this regulatory action based on Health & Safety Code Section 16022, 16600, and Education Code Sections 17310 and 81142.

Other Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations: There are no other matters prescribed by statute applicable to the Division of the State Architect, or to any specific regulation or class of regulations.

Division of the State Architect, Access Compliance

The CBSC proposes to adopt these building standards under the authority granted by Health and Safety Code Sections (H&SC§) 18930 and 18949.1. The purpose of these building standards is to implement, interpret, and make specific the provisions of Government Code Sections (GC§) 4450 through 4461, 12955.1 and H&SC§ 18949.1 and 19952 through 19959. DSA/AC is proposing this regulatory action based on GC§ 4450.

Other Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations: There are no other matters prescribed by statute applicable to the DSA/AC, or to any specific regulation or class of regulations.

Office of Statewide Health Planning and Development

CBSC proposes to adopt these building standards under the authority granted by H&SC Sections 18929 and 18949.3. The purpose of these building standards is to implement, interpret, and make specific the provisions of Health and Safety Code Sections 129825, 129850, 129885. The OSHPD is proposing this regulatory action based on Health and Safety Code Sections 1226, 1275, 18928, 129790, 129825, 129850, 129885, and 129675–130070; and Government Code Section 11152.5.

Other Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations: There are no other matters to be identified.

INFORMATIVE DIGEST

Summary of existing laws and regulations

State Building Standards Law, H&SC Sections 18929 and 18930 require that building standards, including regulations that apply directly to the implementation or enforcement of building standards, be forwarded to CBSC for adoption and/or approval. H&SC Section 18929.1 requires CBSC to receive the building standards from state agencies for consideration in an annual code adoption cycle.

Each regulation shall be adopted in compliance with the procedures specified in H&SC Section 18930 and in GC, Title 2, Division 3, Part 1, Chapter 3.5, Article 5 (commencing with Section 11346). H&SC Sections 18949.1, 18949.2, 18949.3 and 18949.5 transfer the responsibilities to CBSC for adopting regulations relating to building standards proposed by DSA/AC, DSA/SS, HCD, OSHPD and SFM. Under the authority granted by these provisions of law, CBSC proposes this rulemaking.

CBSC is charged with the responsibility to adopt regulations that ensure adequate public participation in the development of building standards prior to submittal to the Commission for adoption and/or approval. In addition, the law requires that the regulations ensure adequate technical review of the proposed building standards by advisory bodies appointed by CBSC. The proposed building standards being noticed were reviewed by advisory bodies of the Commission between July 6 and August 17, 2006 in Sacramento, California. The recommendations made by these committees are incorporated into the express terms. (**Note:** See the informative digests for each state agency in the appendices for specific details on the effect of the proposals.)

Effect of this rulemaking

This rulemaking proposes to:

1. Maintain and amend, repeal, approve, codify and publish administrative regulations contained in CCR, Title 24, Part 1 for DSA SS, DSA AC, and OSHPD. (**Note:** See the informative digests for each state agency in the appendices for specific details on the effect of the proposals.)
2. Adopt by reference the 2006 International Building Code and, amend, repeal, approve, codify and publish building regulations contained in CCR, Title 24, Part 2 for CBSC, HCD, SFM, DSA SS, DSA AC, and OSHPD. (**Note:** See the informative digests for each state agency in the appendices for specific details on the effect of the proposals.)

3. Adopt by reference the 2006 International Fire Code and amend, repeal, approve, codify and publish building regulations contained in CCR, Title 24, Part 9 for SFM and DSA AC. (**Note:** See the informative digests for each state agency in the appendices for specific details on the effect of the proposals.)
4. Maintain and amend, repeal, approve, codify and publish referenced standards contained in CCR, Title 24, Part 12 for OSA AC. (**Note:** See the informative digests for each state agency in the appendices for specific details on the effect of the proposals.)

FISCAL IMPACT

Estimate of Cost or Savings

See appendices.

Cost Impact on Representative Private Persons or Businesses

See appendices.

Initial Determination of Significant Effect on Housing Costs

See appendices.

Mandate on Local Agencies or School Districts

See appendices.

ECONOMIC IMPACT

Initial Determination of Significant Statewide Adverse Economic Impact on Businesses

See appendices.

Assessment of The Effect of Regulation Upon Jobs and Business Expansion, Elimination or Creation

See appendices.

FINDING OF NECESSITY FOR THE PUBLIC'S HEALTH, SAFETY, OR WELFARE

The state agencies have made an assessment of the proposal regarding the economic impact of recordkeeping and reporting requirements and have determined that a report pursuant to Government Code Section 11346.3(c) is not required.

ALTERNATIVES CONSIDERED

The state agencies involved in this rulemaking must determine that no reasonable alternative considered by the state agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is being proposed or would be as effective and

less burdensome to affected private persons than the proposed action.

AVAILABILITY OF RULEMAKING DOCUMENTS

Each agency has prepared, and CBSC has available for public review, Initial Statements of Reasons (ISOR) for the proposed actions, information upon which the proposals are based, and the regulation text. The ISOR and the regulation text can be accessed from CBSC's website at www.bsc.ca.gov/. Hard copies may be requested by contacting CBSC or the state agency proposing the regulations.

Interested parties may obtain a copy of the Final Statement of Reasons, which summarizes objections or recommendations made regarding the regulatory actions and explains how the proposed actions have been changed to accommodate the objections or recommendations, when available, from either CBSC or CBSC's website.

CONTACT INFORMATION FOR QUESTIONS

CBSC Contact Person for Procedural and Administrative Questions

Specific questions regarding the regulations should be addressed to the following department contact person:

Thomas L. Morrison, Deputy Director
Tom.Morrison@dgs.ca.gov / (916) 263-0916
 (916) 263-0959 FAX

Dave Walls, Executive Director
Dave.Walls@dgs.ca.gov (916) 263-0916
 (916) 263-0959 FAX

Contact Persons for Substantive and/or Technical Questions on the Proposed Changes to Building Standards

Specific questions regarding the standards should be addressed to the following department contact persons:

CBSC	Michael Nearman	(916) 263-5888
	Jane Taylor	(916) 263-0807
		(916) 263-0959 FAX
		Michael.Nearman@dgs.ca.gov
		Jane.Taylor@dgs.ca.gov

HCD	Doug Hensel	(916) 445-9471
	Jim McGowan	(916) 445-9471
		(916) 327-4712 FAX
		dhensel@hcd.ca.gov

		jmcgowan@hcd.ca.gov
SFM	Kevin Reinertson	(916) 445-8200 (916) 445-8459 FAX Kevin.Reinertson@fire.ca.gov
DSA SS	Richard Conrad Howard "Chip" Smith	(916) 324-7180 (916) 323-1687 (916) 327-3371 FAX Richard.Conrad@dgs.ca.gov Howard.Smith@dgs.ca.gov
DSA AC	Richard Conrad Aaron Noble	(916) 324-7180 (916) 445-4310 (916) 445-7658 FAX Richard.Conrad@dgs.ca.gov Aaron.Noble@dgs.ca.gov
OSHPD	Duane Borba	(916) 654-3139 (916) 653-2973 FAX regunit@oshpd.ca.gov

APPENDIX A

CODE CHANGE SUBMITTAL PROPOSED BY THE CALIFORNIA BUILDINGS STANDARDS COMMISSION

BSC 01/06 Part 2
BSC 06/06 Part 2, Seismic retrofit

INFORMATIVE DIGEST

Summary of Existing Laws

H & SC §16600. Building seismic retrofit guidelines for state buildings; seismic retrofit building standards

Authorizes CBSC and the Division of the State Architect to develop building seismic retrofit guidelines for existing state buildings.

H & SC §16601. Approval of guidelines and standards; administrative actions

Provides that CBSC shall approve the standards and take administrative actions to make them applicable to

all state buildings, including those owned by the University of California or the California State University.

H & SC §16603. Applicability of chapter to University of California

Allows that provisions of this chapter only apply to the University of California if so resolved by the Regents of the university.

H & SC §16604. Legislative intent

Provides funding to carry out the provisions of this chapter.

H & SC §18928. Model code, national standard, or specification; adoption of and reference to the most recent addition; date of publication; committee

Authorizes the commission to adopt the most recent edition of the International Building Code, and requires that state agencies propose the adoption within one year of publication of a model code.

H & SC §18928.1. Building Standards; incorporation of model codes, applicable national specifications or published standards; publication agreement

Sets forth that the commission shall incorporate text of the model code only by reference, unless otherwise established in a publication agreement between the commission and the model code organization.

H & SC §18934.5. Standards for state buildings; adoption, approval, codification and publication

Authorizes CBSC to adopt and publish building standards applicable to state buildings, including state university buildings and, to the extent permitted by law, University of California buildings.

H & SC §18938. Filing and codification; publication; effective date; emergency standards; application of section

Sets forth that model codes as referenced in the California Building Standards Code shall apply to occupancies throughout the state and shall become effective 180 days after publication.

H & SC 18942(b). Publication, supplements; emergency standards; availability and possession of code

Mandates that CBSC publish statutory safety requirements for the construction of private swimming pools.

GC 14617. Lighting for college campus parking lots and walkways; standards; adoption of regulations

Mandates that CBSC adopt and publish regulations for lighting for parking lots and primary campus walkways at the University of California, California State University, and California Community Colleges.

Summary of Existing Regulations

The existing 2001 California Building Code is Part 2 of CCR, Title 24 and incorporates, by adoption by CBSC, the 1997 Uniform Building Code of the Interna-

tional Conference of Building Officials. This code provides minimum building standards to safeguard public welfare for local jurisdictions within the state of California and for state owned buildings and buildings constructed by the University of California and California State Universities. It contains amendments in Chapter 16A for applications under the authority of the Division of State Architect for seismic retrofit of existing state buildings. It contains references to other codes, such as the fire code, mechanical code, and plumbing code that are adopted for use in California.

In February of 2006, the International Code Council (ICC) published the 2006 edition of the International Building Code (IBC). It contains references to other codes, such as the International Mechanical Code, International Plumbing Code, and International Fuel Gas Code, that California does not adopt.

Summary of Effect

CBSC is mandated to adopt the most current editions of the model codes, which are the 2006 IBC, 2006 International Existing Building Code, 2006 Uniform Mechanical Code, 2006 Uniform Plumbing Code, and 2005 National Electrical Code. This proposed action by CBSC will make effective the 2006 IBC for occupancies pursuant to H & SC §18934.5, 180 days after publication of the next triennial edition of the California Building Code. This proposed action will also:

- Repeal the 2001 CBC, including CBSC amendments thereto;
- Relocate from the 2001 CBC, and propose new, administrative and scoping provisions for occupancies under the authority of state agencies as Chapter 1, General Code Provisions, and rename and relocate IBC Chapter 1 Administration to Appendix Chapter 1;
- Relocate from the 2001 CBC provisions for campus lighting and private swimming pools which are not addressed by the IBC;
- Correlate references to model codes that California does not adopt with those that California proposes for adoption; and
- With the Division of State Architect, relocate from the 2001 CBC, and propose new, seismic retrofit standards for existing state buildings regulated by CBSC.

FISCAL IMPACT

ESTIMATE OF COST OR SAVINGS

- A. Cost or Savings to any state agency: **None**
- B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **None**

- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **None**
- D. Other nondiscretionary cost or savings imposed on local agencies: **None**
- E. Cost or savings in federal funding to the state: **None**

Estimate: **None**

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

CBSC is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

INITIAL DETERMINATION OF SIGNIFICANT EFFECT ON HOUSING COSTS

CBSC has made an initial determination that this proposal would not have a significant effect on housing costs.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

CBSC has determined that the proposed regulatory action would impose a mandate on local agencies or school districts. However, the mandate does not require reimbursement pursuant to Part 7 (commencing with §17500) of Division 4, Government Code. H & SC §18928 requires CBSC to adopt the most current edition of the model codes.

ECONOMIC IMPACT

INITIAL DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES

CBSC has made an initial determination that the adoption of this regulation will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

ASSESSMENT OF EFFECT OF REGULATIONS UPON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION

CBSC has assessed whether or not and to what extent this proposal will affect the following:

- ☐ The creation or elimination of jobs within the State of California,
This regulation will not affect the creation or elimination of jobs within the State of California.
- ☐ The creation of new businesses or the elimination of existing businesses within the State of California.

This regulation will not affect the creation or elimination of existing businesses within the State of California.

- The expansion of businesses currently doing business with the State of California.

This regulation will not affect the expansion of businesses currently doing business within the State of California.

APPENDIX B

CODE CHANGE SUBMITTAL PROPOSED BY THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

HCD 04/06 Part 2

INFORMATIVE DIGEST

Summary of Existing Laws

Section 17921 of the Health and Safety Code and Section 12955.1 of the Government Code require HCD to propose the adoption, amendment, or repeal of building standards by the CBSC.

Section 17922 of the Health and Safety Code requires that the building standards be essentially the same as the most recent editions of the uniform industry codes. The CBSC is authorized to adopt these building standards under the authority granted by Health and Safety Code Section 18949.5.

Health and Safety Code Section 17922 states that the most recent editions of the uniform codes referred to in the section shall be considered to be adopted one year after the date of publication of the uniform codes.

Health and Safety Code Section 17040 requires HCD to adopt building standards for employee housing for “. . .the protection of the public health, safety, and general welfare of employees and the public, governing the erection, construction, enlargement, conversion, alteration, repair, occupancy, use, sanitation, ventilation, and maintenance of all employee housing.”

Health and Safety Code Sections 18300, 18620, 18640, 18865, 18865.3, 18873 and 18873.2 require HCD to adopt building standards for mobilehome parks and special occupancy parks.

Health and Safety Code Section 19990 requires HCD to adopt building standards for factory–built housing.

Summary of Existing Regulations

The California Building Code, Part 2 of Title 24 of the California Code of Regulations (CCR), also known as the California Building Standards Code, adopted by reference the 1997 Uniform Building Code with California amendments, effective on November 1,

2002. The purpose of this code is to establish the minimum requirements necessary to safeguard the public health, safety and general welfare through structural strength, means of egress facilities, stability, sanitation, accessibility, use and occupancy, adequate light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment.

Summary of Effect

HCD proposes to replace the 2001 edition of the California Building Code (CBC) as the building code for new construction and adopt by reference the 2006 edition of the International Building Code (IBC), with California amendments, as indicated on the attached proposed matrix table, into Part 2, Title 24, CCR for the following programs:

- a) State Housing Law: relative to residential occupancies, buildings or structures accessory thereto and as provided for through the Federal Fair Housing Amendment Act’s and state law accessibility requirements, except where the application is for public use only.
- b) Employee Housing Act: relative to the occupancy of any buildings or structures on the property in accordance with Health and Safety Code Section 17040.
- c) Mobilehome Parks or Special Occupancy Parks: relative to the design or construction of permanent buildings and accessory buildings and structures within the park in accordance with Health and Safety Code Sections 18300, 18620, 18640, 18865, 18865.3, 18873 and 18873.2.
- d) Factory–Built Housing Law: relative to residential buildings, dwellings or portions thereof, or building components, or manufactured assemblies in accordance with Health and Safety Code Section 19990.

The amendments provide consistency with model code format, state and federal law and unique California conditions. In addition, the amendments provide clarity, specificity and give direction for the code user.

An in–depth discussion of the effect of the amendments may be found in the initial Statement of Reasons.

FISCAL IMPACT

Estimate of Cost or Savings

- A. Cost or Savings to any state agency: Health and Safety Code Section 17922 requires HCD to adopt by reference the most recent edition of the model building code. This action will result in a minimal cost to HCD which will be absorbed in the current budget.

- B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: NONE.
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: NONE.
- D. Other nondiscretionary cost or savings imposed on local agencies: NONE.
- E. Cost or savings in federal funding to the state: NONE.

Estimate: HCD believes that any additional expenditure resulting from this proposed action will be minimal and will be able to be absorbed within existing budgets and resources.

Cost Impact on Representative Private Person or Business

HCD is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Initial Determination of Significant Effect on Housing Costs

HCD has made an initial determination that this proposal would not have a significant effect on housing costs. The CBSC contact person designated below will make HCD's initial evaluation of the effect of the proposed regulatory action on housing costs available upon request. (See *Economic Impact of the Proposed California Building Code Regulations on Private Persons and Businesses in the State of California* in the rulemaking file.)

Mandate on Local Agencies or School Districts

HCD has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts. Therefore, it does not mandate state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

ECONOMIC IMPACT

Initial Determination of Significant Statewide Adverse Economic Impact on Businesses

HCD has made an initial determination that the proposed action will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states. (See *Economic Impact of the Proposed California Building Code Regulations on Private Persons and Businesses in the State of California* in the rulemaking file.)

Assessment of The Effect of Regulation Upon Jobs and Business Expansion, Elimination or Creation

HCD has initially assessed whether or not, and to what extent, this proposal will affect the following:

- The creation or elimination of jobs within the State of California.
These regulations will not affect the creation, or cause the elimination, of jobs within the State of California.
- The creation of new businesses or the elimination of existing businesses within the State of California.
These regulations will not affect the creation or the elimination of businesses within the State of California.
- The expansion of businesses currently doing business within the State of California.
These regulations will not affect the expansion of businesses currently doing business within the State of California.

(See *Economic Impact of the Proposed California Building Code Regulations on Private Persons and Businesses in the State of California* in the rulemaking file.)

APPENDIX C

CODE CHANGE SUBMITTAL
PROPOSED BY THE
OFFICE OF THE STATE FIRE MARSHAL

SFM 05/06 Part 2

SFM 04/06 Part 9

INFORMATIVE DIGEST (SFM)

Summary of Existing Laws

Health and Safety Code Section 13108(a) The State Fire Marshal shall prepare and adopt building standards related to the means of egress, the installation of fire alarms and fire extinguishing systems in any state-owned building or in any state-occupied building.

Health and Safety Code Section 13113 A automatic sprinkler system shall be installed in all 24-hour institutional type occupancies, and homes for the care of aged or senile persons.

Health and Safety Code Section 13113.5 The State Fire Marshal Shall adopt regulations requiring the installation of automatic smoke detectors in all facilities which provide 24-hour per day care, which house six or fewer persons, and which do not have automatic sprinkler systems.

Health and Safety Code Section 13114(a) The State Fire Marshal shall adopt regulations and standards to control the quality and installation of fire alarm systems and fire alarm devices marketed, distributed, offered for sale, or sold in this state, and that no person shall market, distribute, offer for sale, or sell any fire alarm system or fire alarm device in this state unless the system or

device has been approved and listed by the State Fire Marshal.

Health and Safety Code Section 13132 Every person, firm, or corporation maintaining or operating any facility for the care of the mentally handicapped shall file a statement with the fire authority having jurisdiction within five days of the admission or readmission of a patient stating that such patient is an ambulatory or a nonambulatory person and enumerating the reasons for such classification. Such a statement shall also be filed for each existing patient within 30 days of the effective date of this section.

Any statement required to be filed pursuant to this section shall be certified as to its correctness by the person attending such patient.

It shall be unlawful for any person, firm, or corporation required to file a statement pursuant to this section to include false statements therein. Any such act shall be in violation of this section and subject to the provisions of Section 13112.

Health and Safety Code Section 13132.7 Mandates fire retardant roof coverings in fire hazard severity zones.

Health and Safety Code Section 13133(a) The State Fire Marshal shall develop and adopt regulations establishing new occupancy classifications and specific fire safety standards appropriate for residential facilities, and residential care facilities for the elderly. These fire safety standards shall apply uniformly throughout the state.

Health and Safety Code Section 13135 The State Fire Marshal shall adopt regulations for alcoholism or drug abuse recovery or treatment facilities based on whether the residents or patients of the facilities are nonambulatory.

Health and Safety Code Section 13143 grants the State Fire Marshal authority to prepare and adopt regulations establishing minimum requirements for the prevention of fire and for the protection of life and property against fire and panic in any building or structure used or intended for use as an asylum, jail, mental hospital, hospital, home for the elderly, children's nursery, children's home or institution not otherwise excluded from the coverage of this subdivision, school, or any similar occupancy of any capacity, and in any assembly occupancy where 50 or more persons may gather together in a building, room, or structure for the purpose of amusement, entertainment, instruction, deliberation, worship, drinking or dining, awaiting transportation, or education.

Health and Safety Code Section 13143.1(a) The State Fire Marshal shall prepare, adopt, and submit building standards for establishing minimum requirements for the prevention of fire and for the protection of

life and property against fire and panic in any motion picture or television production facility.

Health and Safety Code Section 13143.6(a) The State Fire Marshal shall prepare and adopt regulations establishing minimum standards for the prevention of fire and for the protection of life and property against fire in any building or structure used intended for use as a home or institution for the housing of any person of any age for protective social care and supervision services by any governmental agency, certified family care homes, out-of-home placement facilities, and halfway houses.

Health and Safety Code Section 13143.9(a) The State Fire Marshal shall prepare, adopt, and submit building standards and other fire and life safety regulations establishing minimum requirements for the storage, handling, and use of hazardous materials.

Health and Safety Code Section 13211 The State Fire Marshal shall prepare and adopt building standards relating to fire and panic safety in high-rise structures.

Health and Safety Code Section 17921(b) The State Fire Marshal shall adopt, amend, or repeal and submit building standards for approval pursuant to the provisions of Chapter 4 (commencing with Section 18935) of Part 2.5, and the State Fire Marshal shall adopt, amend, and repeal other rules and regulations for fire and panic safety in all hotels, motels, lodging houses, apartment houses and dwellings, buildings, and structures accessory thereto. These building standards and regulations shall be enforced pursuant to Sections 13145 and 13146; however, this section is not intended to require an inspection by a local fire agency of each single-family dwelling prior to its occupancy.

Health and Safety Code Section 18928(a) requires each state agency adopting or proposing adoption of a model code, national standards, or specification shall reference the most recent edition of applicable model codes, national standards, or specifications.

Health and Safety Code Section 18897.3 Except as provided in Section 18930, the State Fire Marshal shall adopt minimum fire safety regulations for organized camps in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The State Fire Marshal shall adopt and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of this division for the purposes described in this section.

Health and Safety Code Section 18949.2(b) The State Fire Marshal shall remain the state agency responsible for developing building standards to implement the state's fire and life safety policy. In its role as the fire and life safety standard developing agency, the State Fire Marshal shall continue its existing activities and

forums designed to facilitate compromise and consensus among the various individuals and groups involved in development of the state's codes related to fire and life safety.

(c) The state's fire and life safety building standards, as developed by the State Fire Marshal and as adopted by the commission, shall continue to be based on the state's fire and life safety policy goals and mandates as they existed prior to the enactment of this chapter and as they are amended.

Summary of Existing Regulations

SFM 05/06 Part 2: The State Fire Marshal currently adopts and enforces the 2001 California Building Code as part of Title 24, CCR, Part 2; with SFM amendments relating to fire and panic safety in SFM regulated occupancies.

SFM 04/06 Part 9: The State Fire Marshal currently adopts and enforces the 2001 California Fire Code as part of Title 24, CCR, Part 9; with SFM amendments relating to fire and panic safety in SFM regulated occupancies.

Summary of Effect

SFM 05/06 Part 2: This proposed action would adopt the 2006 International Building Code (IBC) by reference with SFM amendments relating to fire and life safety requirements. This action is consistent with current statute.

The SFM is proposing to bring forward to the 2006 IBC, various SFM amendments found in the 2001 CBC. The SFM's express terms include the adoption matrix tables for the 2007 IBC. These tables indicate the following:

- Existing amendments that are being carried forward from the 2001 CBC into the 2007 CBC
- Renumbering of the existing 2001 CBC that is moved into the 2007 CBC due to relocation of that particular chapter and or section
- Repeal of existing 2001 CBC because the 2006 IBC addresses the topic of the SFM's existing amendment
- Adopt various chapters and or sections new to the 2006 IBC

SFM 04/06 Part 9: This proposed action would adopt the 2006 International Fire Code (IFC) by reference with SFM amendments relating to fire and life safety requirements. This action is consistent with current statute.

The SFM is proposing to bring forward to the 2006 IFC, various SFM amendments found in the 2001 CFC. The SFM's express terms include the adoption matrix tables for the 2007 CFC. These tables indicate the following:

- Existing amendments that are being carried forward from the 2001 CFC into the 2007 CFC
- Renumbering of the existing 2001 CFC that is moved into the 2007 CFC due to relocation of that particular chapter and or section
- Repeal of existing 2001 CFC because the 2006 IFC addresses the topic of the SFM's existing amendment
- Adopt various chapters and or sections new to the 2006 IFC

FISCAL IMPACT

Estimate of Cost or Savings

- A. Cost or Savings to any state agency: **NO**
- B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**
- D. Other nondiscretionary cost or savings imposed on local agencies: **NO**
- E. Cost or savings in federal funding to the state: **NO**

Cost Impact on Representative Private Persons or Businesses

The SFM is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Initial Determination of Significant Effect on Housing Costs

The SFM has made an initial determination that this proposal would not have a significant effect on housing costs.

Mandate on Local Agencies or School Districts

The SFM has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

ECONOMIC IMPACT

Initial Determination of Significant Statewide Adverse Economic Impact on Businesses

The SFM has made an initial determination that this proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with business in other states.

Assessment of The Effect of Regulation Upon Jobs and Business Expansion, Elimination or Creation

The SFM has assessed that adoption of these regulations will not:

- Create or eliminate jobs within California;
- Create new businesses or eliminate existing businesses within California; or
- Affect the expansion of businesses currently doing business within California.

APPENDIX D

CODE CHANGE SUBMITTAL PROPOSED BY THE DIVISION OF THE STATE ARCHITECT, STRUCTURAL SAFETY

DSA SS 03/06 Part 1

DSA SS 02/06 Part 2

DSA SS 01/06 Part 2, Seismic retrofit

INFORMATIVE DIGEST

Summary of Existing Laws

DSA SS 03/06 Part 1 & DSA 02/06 Part 2: Section 16023 of the Health & Safety Code authorizes the State Architect to establish administrative standards for state-owned and state-leased essential services buildings.

Sections 17310 and 81142 of the Education Code authorize the State Architect to establish administrative standards for public elementary and secondary schools, and community colleges.

DSA SS 01/06 Part 2, Seismic retrofit: Section 16600 of the Health & Safety Code authorizes the State Architect to establish building standards for seismic retrofit of state-owned buildings, including buildings owned by the University of California and the California State University.

Summary of Existing Regulations

DSA SS 03/06 Part 1: Existing administrative standards which prescribe administrative requirements for building design and construction of state-owned or state-leased essential services buildings, public elementary and secondary schools, and community colleges are promulgated by the Division of the State Architect. These regulations are contained in Title 24, Part 1.

DSA SS 02/06 Part 2: Existing building standards which prescribe requirements for building design and construction of state-owned or state-leased essential services buildings, public elementary and secondary schools, and community colleges are promulgated by the Division of the State Architect. These regulations are contained in Title 24, Part 2, and are based on provisions within the adopted model building code.

DSA SS 01/06 Part 2, Seismic retrofit: Existing building standards which prescribe requirements for seismic retrofit of state-owned buildings have been promulgated by the Building Standards Commission and the Division of the State Architect, in accordance with Health & Safety Code Section 16600.

These regulations are contained in Title 24, Part 2, Division VI-R of Chapter 16A (Sections 1640A through 1649A).

Summary of Effect

DSA SS 03/06 Part 1: The proposed action would make primarily editorial revisions and clarifications to existing provisions within Title 24, Part 1.

DSA SS 02/06 Part 2: The proposed action would update Title 24, Part 2, by adopting the most recent edition of the selected model building code (*International Building Code*, 2006 edition). The proposed action would also integrate continued structural safety amendments into the updated Title 24, Part 2, and will also repeal existing amendments deemed to be sufficiently addressed by the adopted model building code.

DSA SS 01/06 Part 2, Seismic retrofit: The proposed action would update existing seismic retrofit regulations for state-owned buildings (Division VI-R of Chapter 16A, Title 24, Part 2), by repeal of prescriptive state-promulgated building standards and comprehensive use by reference to recognized national standards.

These updated provisions are proposed to be relocated into Chapter 34 (existing buildings) of the 2007 edition California Building Code, which is based on adoption of the 2006 edition *International Building Code*.

FISCAL IMPACT

Estimate of Cost or Savings

- Cost or Savings to any state agency: **NONE**
- Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NONE**
- Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NONE**
- Other nondiscretionary cost or savings imposed on local agencies: **NONE**
- Cost or savings in federal funding to the state: **NONE**

Cost Impact on Representative Private Persons or Businesses

The Division of the State Architect is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with this proposed regulatory action.

Initial Determination of Significant Effect on Housing Costs

The Division of the State Architect has made an initial determination that this proposed regulatory action WOULD NOT have a significant effect on housing costs. The CBSC contact designated below will make the Division of the State Architect's evaluation of the effect of the proposed regulatory action on housing costs available upon request.

Mandate on Local Agencies or School Districts

The Division of the State Architect has determined that this proposed regulatory action would not impose a mandate on local agencies or school districts.

ECONOMIC IMPACT

Initial Determination of Significant Statewide Adverse Economic Impact on Businesses

The Division of the State Architect has made an initial determination that this proposed regulatory action will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

Assessment of The Effect of Regulation Upon Jobs and Business Expansion, Elimination or Creation

The Division of the State Architect has assessed whether or not, and to what extent, this proposed regulatory action will affect the following:

- The creation or elimination of jobs within the State of California.
The Division of the State Architect has determined that this proposed action has no effect.
- The creation of new businesses or the elimination of existing businesses within the State of California.
The Division of the State Architect has determined that this proposed action has no effect.
- The expansion of businesses currently doing business with the State of California.
The Division of the State Architect has determined that this proposed action has no effect.

APPENDIX E

**CODE CHANGE SUBMITTAL
PROPOSED BY THE
DIVISION OF THE STATE ARCHITECT,
ACCESS COMPLIANCE**

DSA AC 03/06 Part 1

DSA AC 01/06 Part 2

DSA AC 02/06 Part 2, Department of Justice certification

DSA AC 07/06 Part 9

DSA AC 09/06 Part 12

INFORMATIVE DIGEST

Summary of Existing Laws

Section 4450 of the Government Code authorizes the State Architect to establish building standards for making buildings, structures, sidewalks, curbs, and related facilities accessible to and usable by persons with disabilities. Section 12955.1(d) of the Government Code authorizes the State Architect to establish building standards for public housing.

Summary of Existing Regulations

DSA AC 03/06 Part 1: Existing administrative standards for accessibility in this code are adopted to implement or enforce building standards for public buildings, public accommodations, commercial buildings and publicly funded housing as promulgated by the DSA/AC. These administrative standards are contained in Title 24, Part 1.

DSA AC 01/06 Part 2 & DSA AC 02/06 Part 2, Department of Justice certification: Existing building standards which prescribe requirements for accessibility to public buildings, public accommodations, commercial buildings and publicly funded housing are promulgated by the Division of the State Architect. These regulations are contained in Title 24, Part 2, and are based on provisions within the adopted model building code.

DSA AC 07/06 Part 9: Existing fire standards which prescribe fire standards for accessibility to public buildings, public accommodations, commercial buildings and publicly funded housing are promulgated by the DSA/AC. These fire standards are contained in Title 24, Part 9 known as the 2001 California Fire (CFC), and are based on provisions within the adopted 2000 Uniform Fire Code.

DSA AC 09/06 Part 12: Existing referenced standards which prescribe referenced standards for accessibility to public buildings, public accommodations, commercial buildings and publicly funded housing are promulgated by the DSA/AC. These referenced standards are contained in Title 24, Part 12, and may be based on provisions within the adopted model building, electrical, mechanical, plumbing and fire codes.

Summary of Effect

DSA AC 03/06 Part 1: This proposed action would update Title 24, Part 1, with the repeal of existing California amendments to eliminate duplicative provisions adopted and/or amended by DSA/AC in CCR, Title 24 and to codify non-substantive editorial and formatting amendments.

DSA AC 01/06 Part 2: The proposed action would update Title 24, Part 2, by adopting the most recent edi-

tion of the selected model building code (*International Building Code*, 2006 edition).

DSA AC 02/06 Part 2, Department of Justice certification: The proposed action would ensure that the State Architect's regulations and building standards published in CCR, Title 24, Part 2, would not prescribe a lesser standard of accessibility or usability than provided by the Federal Accessibility Guidelines prepared by the federal Access Board as adopted by the United States Department of Justice to implement the Americans with Disabilities Act of 1990 (Public Law 101-336), consistent with Government Code Section 4450(c).

DSA AC 07/06 Part 9: The proposed action would update both the 2001 CFC and 2001 CBC fire provisions into both the California Fire Code and California Building Code, to be consistent with the technical building standards adopted in Part 2 (*California Building Code*) based on the 2006 editions of the International Building Code (IBC) and International Fire Code (IFC).

DSA AC 09/06 Part 12: The proposed action would update Title 24, Part 12, to be consistent with the technical building standards adopted in Part 2 (*California Building Code*).

FISCAL IMPACT

Estimate of Cost or Savings

- A. Cost or savings to any state agency: None
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: None
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: None
- D. Other non-discretionary cost or savings imposed on local agencies: None
- E. Cost or savings in federal funding to the state: None

Cost Impact on Representative Private Persons or Businesses

The Division of the State Architect is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with this proposed regulatory action.

Initial Determination of Significant Effect on Housing Costs

DSA AC 03/06 Part 1: The DSA/AC has made an initial determination that this proposed administrative code regulatory action would not have a significant effect on housing costs. The CBSC contact designated below will make the DSA/AC's evaluation of the effect of the proposed regulatory action on housing costs available upon request. This amendment does not create a change in regulatory effect.

DSA AC 01/06 Part 2, DSA AC 02/06 Part 2, Department of Justice certification, DSA AC 07/06 Part 9, & DSA AC 09/06 Part 12: The Division of the State Architect has made an initial determination that this proposed regulatory action would not have a significant effect on housing costs. The CBSC contact designated below will make the Division of the State Architect's evaluation of the effect of the proposed regulatory action on housing costs available upon request.

Mandate on Local Agencies or School Districts

DSA AC 03/06 Part 1: None. The DSA/AC has determined that this proposed regulatory action would not impose a mandate on local agencies or school districts. This amendment does not create a change in regulatory effect.

DSA AC 01/06 Part 2, DSA AC 02/06 Part 2, Department of Justice certification, DSA AC 07/06 Part 9, & DSA AC 09/06 Part 12: The Division of the State Architect has determined that this proposed regulatory action would not impose a mandate on local agencies or school districts.

ECONOMIC IMPACT

Initial Determination of Significant Statewide Adverse Economic Impact on Businesses

DSA AC 03/06 Part 1: The DSA/AC has made an initial determination that this proposed administrative code action will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states. This amendment does not create a change in regulatory effect.

DSA AC 01/06 Part 2, DSA AC 02/06 Part 2, Department of Justice certification, DSA AC 07/06 Part 9, & DSA AC 09/06 Part 12: The Division of the State Architect has made an initial determination that this proposed regulatory action will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

Assessment of The Effect of Regulation Upon Jobs and Business Expansion, Elimination or Creation

DSA AC 03/06 Part 1: The DSA/AC has assessed whether or not, and to what extent, this proposed regulatory action will affect the following:

- The creation or elimination of jobs within the State of California.

The DSA/AC has determined that this proposed action has no effect. This amendment does not create a change in regulatory effect.

- The creation of new businesses or the elimination of existing businesses within the State of California.

The DSA/AC has determined that this proposed action has no effect. This amendment does not create a change in regulatory effect.

- The expansion of businesses currently doing business with the State of California.

The DSA/AC has determined that this proposed action has no effect. This amendment does not create a change in regulatory effect.

DSA AC 01/06 Part 2, DSA AC 02/06 Part 2, Department of Justice certification, DSA AC 07/06 Part 9, & DSA AC 09/06 Part 12: The DSA/AC has assessed whether or not, and to what extent, this proposed regulatory action will affect the following:

- The creation or elimination of jobs within the State of California.

The DSA/AC has determined that this proposed action has no effect.

- The creation of new businesses or the elimination of existing businesses within the State of California.

The DSA/AC has determined that this proposed action has no effect.

- The expansion of businesses currently doing business with the State of California.

The DSA/AC has determined that this proposed action has no effect.

APPENDIX F

**CODE CHANGE SUBMITTAL
PROPOSED BY THE
OFFICE OF STATEWIDE HEALTH PLANNING
AND DEVELOPMENT**

OSHDP 01/06 Part 1

OSHDP 02/06 Part 2 (Non-structural provisions, except Chapter 12)

OSHDP 03/06 Part 2 (Non-structural provisions, Chapter 12)

OSHDP 04/06 Part 2 (Structural provisions)

INFORMATIVE DIGEST

Summary of Existing Laws

Health and Safety Code Section 1226 authorizes the Office to prescribe, in consultation with the Community Clinics Advisory Committee, minimum building standards for the physical plant of clinics, for adoption in the California Building Standards Code.

Health and Safety Code Section 1275 authorizes the Office to adopt and enforce building standards for the physical plant of health facilities including hospitals, skilled nursing facilities and correctional treatment centers.

Health and Safety Code Section 18928 authorizes state agencies to adopt the most recent edition of model code, as amended or proposed to be amended by the agency, within one year of the publication date of that model code.

Health and Safety Code Section 18929 mandates that building standards or administrative regulations that directly apply to the implementation or enforcement of building standards must be submitted by the adopting agency to the California Building Standards Commission for the Commission's approval and must be adopted pursuant to Health and Safety Code Section 18930 and the Government Code (commencing with Section 11346).

Health and Safety Code Sections 129675 through 130070 authorizes the Office to provide plan review and construction observation for hospitals, skilled nursing facilities and intermediate care facilities in order to assure that these health facilities are compliant with the California Building Standards Code. Specifically, Section 129850 authorizes the Office to develop regulations to effectively carry out the mandate of the Alfred E. Alquist Hospital Facilities Seismic Safety Act.

Health and Safety Code Section 129825 requires the hospital governing board or authority to provide competent adequate inspection during the construction or alteration of a hospital construction project. The inspector(s) must be satisfactory to the architect or engineer, or both, and the Office. Additionally, as part of the approval of an inspector, the Office is required to test inspectors and certify those who successfully pass the examination(s). The Office is authorized to develop regulations for testing and approval of inspectors.

Health and Safety Code Section 129850 authorizes the Office to propose building standards, as necessary, in order to carry out the requirements of the Alfred E. Alquist Hospital Facilities Seismic Safety Act. The Office is also authorized to submit to the California Building Standards Commission for approval and adoption of building standards related to the seismic safety of hospital buildings.

Health and Safety Code Section 129885 specifies the responsibilities of the local building jurisdiction and the Office regarding plan review, inspection and certification of licensed clinic facilities.

Health and Safety Code Section 129790 authorizes the Office to propose building standards for correctional treatment centers in cooperation with the Department of Corrections, Board of Corrections and Department of Youth Authority.

Government Code Section 11152.5 authorizes a state department to adopt regulations pursuant to the Government Code. Regulations which are building standards must be adopted pursuant to State Building Standards Law of the Health and Safety Code (commencing with 18901).

Summary of Existing Regulations

OSHDP 01/06 Part 1:

- Plans and specifications for health facility construction are submitted to OSHDP for review and approval by the design architect and/or engineer. There currently are no standards for the dimension or weight of these documents.
- OSHDP administers the Hospital Inspector Certification Examinations for individuals to be certified to inspect hospital construction. There currently are three certification classes of inspectors: Class "A", "B" and "C". In order to take the certification exam for a specific class of hospital inspector, an individual must meet specific minimum qualifications. The exams are divided into sections which relate to the following areas of code enforcement: structural, architectural, mechanical, electrical, fire and life safety and administrative. An applicant must pay a fee as specified in regulations.
- Outpatient clinics are under the jurisdiction of the local building official for plan review and inspection of construction. However, the hospital governing authority may request that, instead, OSHDP perform these services for an outpatient clinic under the hospital's license. Current regulation allows that OSHDP may agree or disagree to provide the requested services.

OSHDP 02/06 Part 2 (Non-structural provisions, except Chapter 12) & OSHDP 03/06 Part 2 (Non-structural provisions, Chapter 12): The OSHDP currently enforces the California Code of Regulations, Title 24, Part 2, 2001 California Building Code which is based on the 1997 Uniform Building Code with California amendments. OSHDP enforces requirements related to the construction of hospitals, skilled nursing facilities, licensed clinics and correctional treatment centers.

OSHDP 04/06 Part 2 (Structural provisions): The OSHDP currently enforces the California Code of Regulations, Title 24, Part 2, 2001 California Building Code (CBC) which is based on the 1997 Uniform Building Code with California amendments. OSHDP enforces requirements related to the construction of hospitals, skilled nursing facilities, licensed clinics and correctional treatment centers. Requirements governing the structural design and construction of OSHDP regulated health facilities are currently found in the 2001 CBC, Volume 2.

Summary of Effect

OSHDP 01/06 Part 1: The proposed regulations will provide standard dimensions and weight limitations for plans submitted to OSHDP for review, clarify Class "C" Hospital Inspector minimum qualifications and implement statute regarding plan review and construction inspection services for outpatient clinics under a hospital license.

OSHDP 02/06 Part 2 (Non-structural provisions, except Chapter 12): The proposed action is to adopt the 2006 International Building Code for incorporation, by reference, into the 2007 California Building Code and to carry forward existing California amendments related to health facilities and minor technical modifications.

OSHDP 03/06 Part 2 (Non-structural provisions, Chapter 12): The proposed action is to adopt the 2006 International Building Code for incorporation, by reference, into the 2007 CBC and to carry forward existing California amendments related to health facilities. Additionally, significant modifications to the architectural space provisions for hospitals are being proposed to incorporate concepts and/or specific requirements currently found in the 2001 CBC, Section 420A. This includes amendments to the space requirements for basic services, support services and supplemental services. The proposed amendments are based on the nationally recognized standards of the American Institute of Architects Academy of Architecture for Health, "Guidelines for Design and Construction of Hospital and Health Care Facilities" (AIA Guidelines). The AIA Guideline requirements are being incorporated into the 2007 CBC either in their entirety or when necessary, will amend current 2001 CBC requirements that are being carried forward. Also, the 2001 CBC requirements that are not adequately addressed in the AIA Guidelines are being carried forward.

OSHDP 04/06 Part 2 (Structural provisions): The purpose of this proposed action is to adopt the 2006 International Building Code (IBC), by reference, into the 2007 CBC, carry forward existing California amendments related to the structural design of health facilities

and propose new amendments. This proposed action will:

- Repeal the 1997 Uniform Building Code of the International Conference of Building Officials and incorporate and adopt in its place the 2006 International Building Code of the International Code Council for application and effectiveness in the 2007 California Building Code pursuant to Health and Safety Code 18928. Health and Safety Code 18928 requires any state agency adopting model codes to adopt the most recent edition.
- Repeal amendments to the 1997 Uniform Building Code and/or California Building Standards not addressed by the model code that are no longer necessary nor justified pursuant with Health and Safety Code 18930(a)(7).
- Adopt and implement additional necessary amendments to the 2006 IBC that address inadequacies of the 2006 International Building Code as they pertain to California laws.
- Codify non-substantive editorial and formatting amendments from the format based upon the 1997 UBC to the format of the 2006 IBC.

This proposal will modify the following: Chapters 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 33, 34, 35, Appendix J and Chapters 16A, 17A, 18A, 19A, 21A, 22A and 34A.

Since 2000 and 2003 code adoption cycles have passed between the 2001 CBC and the 2007 CBC, some of the design concepts and/or philosophies have become obsolete. Repeal of California amendments for those sections in the 2001 CBC that are obsolete are not explicitly addressed.

FISCAL IMPACT

Estimate of Cost or Savings

OSHDP 01/06 Part 1:

- A. Cost or Savings to any state agency: **Yes.** University of California hospitals.
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **No.**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **No**
- D. Other nondiscretionary cost or savings imposed on local agencies: **Yes.** County and district hospitals.
- E. Cost or savings in federal funding to the state: **No**

Estimate: Minor cost to health facilities for shipping sets of project plans weighing over 40 lbs. to OSHDP.

Sets of plans over 40 lbs. would have to be split and shipped in separate packages. This would cost approximately \$10.00 for each additional package shipped.

The proposed regulations would impact hospitals, skilled nursing facilities, licensed clinics and correctional treatment centers.

OSHDP 02/06 Part 2 (Non-structural provisions, except Chapter 12):

- A. Cost or Savings to any state agency: **No**
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **No**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **No**
- D. Other nondiscretionary cost or savings imposed on local agencies: **No**
- E. Cost or savings in federal funding to the state: **No**

OSHDP 03/06 Part 2 (Non-structural provisions, Chapter 12):

- A. Cost or Savings to any state agency: **Yes.** University of California hospitals.
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **No.**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **No**
- D. Other nondiscretionary cost or savings imposed on local agencies: **Yes.** County and district hospitals.
- E. Cost or savings in federal funding to the state: **No**

Estimate: These proposed regulations will result in indeterminable costs and/or savings to a general acute care hospitals, licensed in California, when the facilities are remodeled, renovated or for construction of new facilities. OSHDP is proposing extensive changes to the current regulations governing hospital services space for all the basic and supplemental services provided in an acute care setting. These amendments are based on the current American Institute of Architects Academy of Architecture for Health "Guidelines for Design and Construction of Hospital and Health Care Facilities (AIA Guidelines).

The proposed OSHDP regulations require an increase in room sizes for the new construction of patient rooms, operating rooms and specified critical care spaces. This would result in increased construction costs for new construction. The amount of cost increase depends on the supplemental services included in the design and construction of the facilities. Renovations to existing rooms are not subject to these increases.

Additionally, these proposed regulations significantly reduce current requirements that will result in cost savings to existing facilities and new construction of acute care facilities. These changes include a reduction in mandated sizes for hospital food preparation areas, elimination of the 90 linear foot maximum distance from the farthest patient room to the nursing station, a reduction in the number labor and delivery rooms, and the allowance of cabinet toilets in the Intensive Care Unit (ICU).

OSHPD 04/06 Part 2 (Structural provisions):

- A. Cost or Savings to any state agency: **No**
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **No**.
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **No**
- D. Other nondiscretionary cost or savings imposed on local agencies: **No**
- E. Cost or savings in federal funding to the state: **No**

Estimate: The regulations proposed will have no overall cost impact on hospitals, skilled nursing facilities, licensed clinics and correctional treatment centers:

- 1. In most areas of California, seismic base shear will be less than what is in the 2001 California Building Code (CBC), except in areas close to known active earthquake faults, where base shear will be more or less unchanged. Since seismic category is dependent on special acceleration, soil type and occupancy category, individual sites can take advantage of all three factors instead of relying on seismic zones as in 2001 CBC.
- 2. Component design forces will be smaller at higher elevations because of reduction in rate of increase of spectral acceleration with height provided in ASCE 7, Chapter 13. This change along with reduction in base shear can reduce component design forces significantly.
- 3. Non-building structures are permitted to be non-ductile and non-redundant when designed for higher base shear. This may reduce the detailing cost in some circumstances.
- 4. Construction detailing requirements in materials standards will be equivalent to 2001 CBC.
- 5. Inspection and testing requirements in the new 2007 CBC code will be some what more stringent than what is in the 2001 CBC.

- 6. Construction documentation requirements are clearly spelled out and this will add to the efforts in design document preparation in some cases.

Cost Impact on Representative Private Persons or Businesses

OSHPD 01/06 Part 1: Minor cost to health facilities for shipping sets of project plans weighing over 40 lbs. to OSHPD. Sets of plans over 40 lbs. would have to be split and shipped in separate packages. This would cost approximately \$10.00 for each additional package shipped.

OSHPD 02/06 Part 2 (Non-structural provisions, except Chapter 12), OSHPD 03/06 Part 2 (Non-structural provisions, Chapter 12) & OSHPD 04/06 Part 2 (Structural provisions): The OSHPD is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Initial Determination of Significant Effect on Housing Costs

The OSHPD has made an initial determination that this proposal would not have a significant effect on housing costs.

Mandate on Local Agencies or School Districts

The OSHPD has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

ECONOMIC IMPACT

Initial Determination of Significant Statewide Adverse Economic Impact on Businesses

The OSHPD has made an initial determination that the adoption/amendment/repeal of this regulation will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

Assessment of The Effect of Regulation Upon Jobs and Business Expansion, Elimination or Creation

The OSHPD has assessed whether or not and to what extent this proposal will affect the following:

- ☐ The creation or elimination of jobs within the State of California.
These regulations will have no effect.
- ☐ The creation of new businesses or the elimination of existing businesses within the State of California.
These regulations will have no effect.
- ☐ The expansion of businesses currently doing business with the State of California.
These regulations will have no effect.

GENERAL PUBLIC INTEREST

TITLE 2. DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

NOTICE IS HEREBY GIVEN that the prospective contractors listed below have been required to submit a Nondiscrimination Program (NDP) or a California Employer Identification Report (CEIR) to the Department of Fair Employment and Housing, in accordance with the provisions of Government Code Section 12990. No such program or (CEIR) has been submitted and the prospective contractors are ineligible to enter into State contracts. The prospective contractor's signature on Standard Form 17A, 17B, or 19, therefore, does not constitute a valid self-certification. Until further notice, each of these prospective contractors in order to submit a responsive bid must present evidence that it's Nondiscrimination Program has been certified by the Department.

ASIX Communications, Inc.
DBA ASI Telesystems, Inc.
21150 Califa Street
Woodland Hills, CA 91367

Bay Recycling
800 77th Avenue
Oakland, CA 94621

C & C Disposal Service
P.O. Box 234
Rocklin, CA 95677

Choi Engineering Corp.
286 Greenhouse Marketplace, Suite 329
San Leandro, CA 94579

Fries Landscaping
25421 Clough
Escalon, CA 95320

Marinda Moving, Inc.
8010 Betty Lou Drive
Sacramento, CA 95828

MI-LOR Corporation
P.O. Box 60
Leominster, MA 01453

Peoples Ridesharing
323 Fremont Street
San Francisco, CA 94105

San Diego Physicians & Surgeons Hospital
446 26th Street
San Diego, CA

Southern CA Chemicals
8851 Dice Road
Santa Fe Springs, CA 90670

Tanemura and Antle Co.
1400 Schilling Place
Salinas, CA 93912

Turtle Building Maintenance Co.
8132 Darien Circle
Sacramento, CA 95828

Univ Research Foundation
8422 La Jolla Shore Dr.
La Jolla, CA 92037

Vandergoot Equipment Co.
P.O. Box 925
Middletown, CA 95461

DEPARTMENT OF FISH AND GAME

Department of Fish and Game —
Public Interest Notice
For Publication September 1, 2006
CESA CONSISTENCY DETERMINATION FOR
Lower Northwest Interceptor Program
Sacramento and Yolo County

The Department of Fish and Game ("Department") received a notice on August 10, 2006 that the Sacramento Regional County Sanitation District ("SRCSD") proposes to rely on consultations between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act ("CESA"). This project consists of the construction of about 20 miles of wastewater conveyance infrastructure and related facilities in Sacramento and Yolo Counties. The activities will require trenching of sufficient width to accommodate the pipes along the entire alignment, which will result in temporary impacts to 85.80 acres and permanent impacts to 15.30 acres of giant garter snake (*Thamnophis gigas*) habitat.

The U.S. Fish and Wildlife Service ("Service"), on September 10, 2004, issued to the U.S. Army Corps of Engineers ("Corps"), a no jeopardy federal biological opinion (1-1-04-F-0029) which considers the Federally and State threatened giant garter snake and authorizes incidental take. Subsequently, SRCSD modified the project description such that the Service issued amendments to the biological opinion on July 21, 2005 (1-1-05-F-0198), September 16, 2005 (1-1-05-F-0253), and June 28, 2006 (1-1-06-F-0139).

Pursuant to California Fish and Game Code Section 2080.1, SRCSD is requesting a determination that amendment 1-1-06-F-0139 to biological opinion 1-1-04-F-0029 is consistent with CESA. If the De-

partment determines that the project, as amended, is consistent with CESA, SRCSD will not be required to obtain an incidental take permit for the proposed project.

DEPARTMENT OF FISH AND GAME

Department of Fish and Game —
Public Interest Notice
For Publication September 1, 2006
CESA CONSISTENCY DETERMINATION FOR
Montanera Residential Development Project
Quercus Creek Restoration Component
Contra Costa County

The Department of Fish and Game ("Department") received notice on August 10, 2006 that the City of Orinda proposes to rely on consultations between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act ("CESA"). This project consists of the addition of a "City Project" to the existing Montanera Project, which includes development of a residential community on a portion of a 985 acre project site. The project will impact both upland and wetland habitats on approximately 253 acres. The City Project component includes restoration of Quercus Creek and the development of community playfields on 18.3 acres adjacent to the northwest portion of the Montanera project site.

The U.S. Fish and Wildlife Service ("Service") issued a biological opinion (1-1-02-F-0168) to the U.S. Army Corps of Engineers on October 8, 2004 which considers the federally and state threatened Alameda whipsnake (*Masticophis lateralis euryxanthus*) and authorizes incidental take. Subsequently, the Service issued amendment 1-1-06-F-0084 on July 17, 2006 to incorporate the City Project Quercus Creek Restoration component.

Pursuant to California Fish and Game Code Section 2080.1, the City of Orinda is requesting a determination that amendment 1-1-06-F-0084 to biological opinion 1-1-02-F-0168 is consistent with CESA. If the Department determines that the amended biological opinion is consistent with CESA, the City of Orinda will not be required to obtain an incidental take permit for the proposed project.

ACCEPTANCE OF PETITION TO REVIEW ALLEGED UNDERGROUND REGULATIONS

CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM

Office of Administrative Law

Acceptance of Petition to Review Alleged Underground Regulation

The Office of Administrative Law has accepted the following petition for consideration. Please send your comments to:

Kathleen Eddy, Senior Counsel
Office of Administrative Law
300 Capitol Mall, Ste. 1250
Sacramento, CA 95814

You must also send a copy of your comment to the petitioner and the agency contact as identified in the petition. Please refer to CTU-06-0725-01.

The petitioner is:

James McRitchie
9295 Yorkship Court
Elk Grove, CA 95758

The agency contact is:

Carol McConeel, General Counsel
CalPERS
P.O. BOX 942707
Sacramento, CA 94229-2707

PETITION TO THE OFFICE OF ADMINISTRATIVE LAW

RE: Uncodified CalPERS Election Regulations

FROM: James McRitchie

DATE: July 24, 2006

1. Identifying Information:

James McRitchie
9295 Yorkship Court, Elk Grove, CA 95758
Telephone number: (916) 869-2402
Your email: jm@perswatch.net

2. State agency or department being challenged:

California Public Employees Retirement System (CalPERS)

3. Provide a complete description of the purported underground regulation. Attach a written copy of it. If the purported underground regulation is found in an agency manual, identify the specific provision of the manual alleged to comprise the underground regulation. Please be as precise as possible.

“Procedures for Becoming a Candidate” and the “Election Schedule,” both contained in the “Notice of Election.”¹

Additionally, CalPERS requires the use of specific named forms, which have not been promulgated as regulations, such as the Nomination Petition form (CalPERS–BRD–74).² According to the Notice of Election, “Only Nominations Petitions which are supplied by CalPERS or copies of that form will be acceptable.” Other required forms, which have not been promulgated as regulations, include the Nomination Acceptance/Ballot Designation Form,³ Candidate Statement Form,⁴ Addendum to Candidate Statement,⁵ and Criteria for Ballot Designation.⁶

- The election schedule of CalPERS is not published in regulations and is subject to change without notice. CalPERS actually pushed the final cut-off for voting back during the 2002 elections after one candidate (David Miller) had used up their campaign resources.⁷ I believe this was done to comply with a court ruling that nullified emergency regulations.⁸ However, without the schedule being in regulations, it is certainly open to abuse.

¹ Attachment 1, Notice of Election, 2006, <http://www.calpers.ca.gov/eip-docs/about/organization/board/2006-elections/bd-election-stater-ev.pdf>

² Attachment 2, Nomination Petition form (CalPERS–BRD–74) abbreviated to include first 2 pages. <http://www.calpers.ca.gov/eip-docs/about/organization/board/2006-elections/nomination-petition-2006-final.pdf>

³ Attachment 3, Nomination Acceptance/Ballot Designation Form, <http://www.calpers.ca.gov/eip-docs/about/organization/board/2006-elections/nom-accept-ballot-desig-form-195-2006.pdf>

⁴ Attachment 4, Candidate Statement Form, <http://www.calpers.ca.gov/eip-docs/about/organization/board/2006-elections/cand-stmnt-form-172-2006.pdf>

⁵ Attachment 5, Addendum to Candidate Statement, <http://www.calpers.ca.gov/eip-docs/about/organization/board/2006-elections/cand-stmnt-addend-bklt-rgmnts.pdf>

⁶ Attachment 6, Criteria for Ballot Designation, <http://www.calpers.ca.gov/eip-docs/about/organization/board/2006-elections/ballot-designation-195A-2006.pdf>

⁷ Attachment 7, e-mail from David Miller dated July 14, 2006

⁸ Attachment 8, Notice of Election, 2002 and Amended Notice of Election 2002

- Although California Code of Regulations, title 2, section 554.2 specifies that the Election Coordinator shall distribute a Notice of Election “containing candidate nomination and election procedures, eligibility criteria for candidates and voters, and the schedule of events,” no information concerning these procedures, criteria or schedule is included in that section or, to my knowledge, anywhere else in title 2.
- Underground regulations include the following requirements:
 1. First name, middle initial, last name of the nominee; the last name will be used to verify membership against CalPERS’ database;
 2. Last six numbers of the Social Security Number of the nominee, which will be used to verify membership against CalPERS’ database;
 3. Agency where currently employed;
 4. Address, telephone number, e-mail address and fax number;
 5. Signature of Nominee consenting to nomination.
 6. The Petition must contain original signatures, endorsed the Nominee: by at least two hundred and fifty (250) eligible active State members of CalPERS which includes:
 7. Clearly printed or typewritten name of each member; the last name will be used to verify membership against CalPERS’ database;
 8. Clearly printed last six numbers of the Social Security Number which will be used to verify membership against CalPERS’ database (This is the most troublesome aspect of the underground regulations, since it opens those signing such petitions to increased risk from identity theft.); and,
 9. Signature of each member beneath the printed or typewritten name, endorsing the Nominee.
 10. The Nomination Acceptance/Ballot Designation and Candidate Statement forms will be provided to the Nominee with the Nomination Petition when requested by phone or correspondence through the Board Elections Office, or, the forms are available on CalPERS’ web site at www.calpers.ca.gov. The Nominee will be notified by phone as to whether or not the eligibility and nomination petition requirements have been met.
 11. Nomination Acceptance/Ballot Designation Form—Each candidate must certify on a form provided by CalPERS that he/she accepts the nomination and consents to serve if elected by a

majority vote, 50 percent of votes cast plus one vote.

12. Candidates must return the original Nomination Acceptance/Ballot Designation Form, which must be received at the CalPERS headquarters office in Sacramento no later than the April 10, 2006, 5:00 p.m. deadline.
13. A candidate who decides to withdraw candidacy after submitting his/her certified Nomination Acceptance/Ballot Designation Form must notify the CalPERS Election Coordinator by phone and follow-up in writing within five (5) working days following the nomination acceptance deadline date in order to have his/her name removed from the ballot and Candidate Statement Booklet.
14. The Candidate Statement Form is to be submitted with the Nomination Acceptance/Ballot Designation Form, which must be received at the CalPERS headquarters office in Sacramento no later than the April 10, 2006, 5:00 p.m. deadline.

4. Provide a description of the agency actions you believe demonstrate that it has issued, used, enforced, or attempted to enforce the purported underground regulation.

CalPERS utilizes the regulations contained in the Notice of Elections to supplement regulations contained in California Code of Regulations, title 2, sections 554 through 554.10. CalPERS is following the above procedures in the current CalPERS elections and at least somewhat similar procedures over the last several election cycles. The instructions were distributed to candidates and are available to the public on the Internet at <http://www.calpers.ca.gov/eip-docs/about/organization/board/2006-elections/bd-election-staterev.pdf>

These regulations are underground regulations, as that term is defined in California Code of Regulations, title 1, section 250, since these instructions governing CalPERS procedures and their applicability to candidates to office constitute standards of general application that are regulations as defined in Section 11342.600 of the Government Code, but have not been adopted as regulations and filed with the Secretary of State pursuant to the Administrative Procedure Act (APA) and are not subject to an express statutory exemption from adoption pursuant to the APA.

The procedures outlined above are clearly labeled by CalPERS as "Nomination Petition *Requirements*." (Emphasis added)

Each potential candidate *must* submit a Nomination Petition form. . .

Petitions containing original signature *must* be received. . .

nomination period for the position *shall* be extended. . . (Emphasis added)

5. State the legal basis for believing that the guideline, criterion, bulletin, provision in a manual, instruction, order, standard of general application, or other rule or procedure is a regulation as defined in Section 11342.600 of the Government Code AND that no express statutory exemption to the requirements of the APA is applicable.

Government Code section 11342.600 defines "regulation" to mean "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedures. (Emphasis added)

CalPERS is a state agency as defined by Government Code section 11000, which states in part, "state agency" includes every state office, officer, department, division, bureau, *board*, and commission. (Emphasis added)

CalPERS is in the executive branch of state government. Thus, APA rulemaking requirements generally apply to the Board, except to the extent it has been expressly exempted from the APA. No specific exemption has been enacted. Therefore, the APA is generally applicable to the Board. Its codified regulations are printed in California Code of Regulations, title 2, division 1, chapter 2, sections 550 to 599.55.

In *State Water Resources Control Board v. Office of Administrative Law (Bay Planning Commission)* (1993), the court made clear OAL must focus on the content of the challenged agency rule, not the label placed on the rule by the agency. "...the...Government Code [is] careful to provide OAL authority over regulatory measures whether or not they are designated 'regulations' by the relevant agency. In other words, *if it looks like a regulation, reads like a regulation, and acts like a regulation, it will be treated as a regulation whether or not the agency in question so labeled it. . .*" (Emphasis added)

In the past CalPERS has asserted its unique status exempts it from the APA by virtue of passage of Proposition 162, which amended Article 16, section 17 of the Constitution. That assertion was found invalid by OAL in their response to my March 23, 1998 request (1999 OAL Determination No. 18)⁹ as well as by the courts in *Kathleen Connell for Controller v. CalPERS* (September 28, 1998).

CalPERS continues to seek overall exemptions from the APA. For example, CalPERS sponsored SB 1729 (June 14, 2006), which would create a statutory framework for a health care trust fund, would have totally exempted the CalPERS Board from the provisions of the

⁹ Attachment 9, 1999 OAL Determination No. 18 <http://perswatch.net/iss/OALDetermination.pdf>

Administrative Procedure Act (APA). I urged members of the Public Employees, Retirement and Social Security Committee to adopt amendments to ensure the Board is bound by the APA. (see [letter of June 19, 2006](#))¹⁰ The Committee met on June 21 and accepted the substance of my amendments.¹¹

6. Provide information demonstrating that the petition raises an issue of considerable public importance requiring prompt resolution.

CalPERS Board members are statewide office holders, subject to the Political Reform Act, having enormous potential to impact not only on the internal operations of CalPERS and members of the system but on all citizens of California. For example, if the Board of Administration fails to make investments that adequately cover legally obligated benefits, taxpayers must make up the difference.

Additionally, with a portfolio of more than \$200 billion, the CalPERS Board has fiduciary responsibility for approximately 1/2% of all US corporate equity, including the responsibility to vote proxies appurtenant to those shares of stock solely in the interests of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries. CalPERS elections have considerable public importance, not only to CalPERS employees and members but also to California taxpayers and everyone impacted by the thousands of corporations in which CalPERS is invested.

In 2003, for example, CalPERS joined with other funds in placing an ad in the Wall Street Journal to support shareholder access to the corporate proxy for the purpose of electing shareholder nominees. (see Council of Institutional Investors brief, Equal Access — What Is It? at http://www.concernedshareholders.com/CalPERS_EqualAccess.pdf for background on my petition to the SEC, which reopened interest in “equal access”) Included in the CalPERS sponsored ad was the following sentence: “When boards control their own membership, directors can be unaccountable and inattentive — opening the door to abusive executive compensation, fraud and other misconduct. . . Investors deserve a true voice in director elections.” (see <http://www.calpers-governance.org/news/2003/news/092503.asp>) Of course, the same admonition applies to CalPERS itself, especially since our defined benefit plan is continuously under attack. (See, for example, [Making Corporate Governance Decisions That Work for Whom?](#), at <http://corpgov.net/forums/commentary/ICCG2005.html> for an analysis of this attack) It is,

therefore, important that CalPERS elections be conducted fairly with utmost integrity, in compliance with all California laws.

More specifically to the underground regulations in question:

- The nomination petition requirements open CalPERS members up to potential identity theft, since petitions, which are frequently openly passed from person to person or are even posted on bulletin boards, require petitioners to include the last six numbers of their Social Security Number. All one needs to do to complete the entire Social Security Number is to learn or even guess where the individual lived when he/she registered for Social Security, since those first three numbers are based on the geographic residence of the applicant.

During my own recent experience in collecting nomination petition signatures, many signers refused to include the required Social Security identification, even though they strongly supported my candidacy. This was most often the case among employees who must deal with confidential information, such a legal counsel in the Attorney General’s Office, and those who work in human resources offices.

According to the Social Security Administration, “Identity theft is one of the fastest growing crimes in America. When a dishonest person has your Social Security number, the thief can use it to get other personal information about you. Most of the time identity thieves use your number and your good credit to apply for more credit in your name. Then, they use the credit cards and do not pay the bills. You do not find out that someone is using your number until you are turned down for credit, or you begin to get calls from unknown creditors demanding payment for items you never bought. Someone illegally using your Social Security number and assuming your identity can cause a lot of problems.” (see <http://www.socialsecurity.gov/pubs/10064.html>)

If CalPERS had gone through the required APA process, they would have received comments from members objecting to the careless and unnecessary use of Social Security Numbers.

The following summarizes my testimony at the May 16, 2006 meeting of the Benefits & Program Administration Committee on Agenda Item 11, A. 5. d. “Is there an alternative method of verifying membership than last six digits of SSN?” The CalPERS staff report says using the last 6 SSN digits provides the best opportunity to validate membership “without breaching the confidentiality of the member’s identity.” “The present

¹⁰ Attachment 10, letter to Public Employees, Retirement and Social Security Committee dated June 19, 2006. <http://perswatch.net/corr/SB1729.pdf>

¹¹ Attachment 11, SB 1729 http://www.leginfo.ca.gov/pub/bill/sen/sb_1701-1750/sb_1729_bill_20060627_amended_asm.pdf

method using member's first and last name and six digits of the SSN provides the best opportunity to validate CalPERS membership *without* breaching the confidentiality of the member's identity." (my emphasis)

1. Using the last 6 digits does breach confidentiality, since the first digits are assigned based on the region in which you apply for an SSN. (was local office, after 1972 based on zip code) A recent Federal Trade Commission survey reported that, between 1998 and 2003, 27.3 million Americans were victims of identity theft. A report by CALPIRG and the Privacy Rights Clearinghouse (<http://www.pirg.org/consumer/credit/theft.htm>) finds the average consumer spends 175 hours and \$808 "out-of-pocket" to remedy identity theft. Total costs to society are \$50 billion annually.
2. The requirement that nomination petitions include SSN is an underground regulation. "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure. (Government Code section 11342.600) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a "regulation" under the APA unless it has been adopted as a regulation and filed with the Secretary of State pursuant to the APA. (Government Code section 11340.5(a)) CalPERS is not exempt. (1999 OAL Determination No. 18, initiated by J. McRitchie)
3. Your duty as board members isn't to make it easy for candidates. Your Constitutional duty to "participants and their beneficiaries shall take precedence over any other duty." Collecting an extra 100–200 signatures isn't that big of a deal compared to putting hundreds of members at increased risk from identity theft. Perhaps date of birth and zip code would be a better means of verification.
- Additionally, the current underground regulations facilitate potential abuse by incumbents who can change the number of signatures required, the election schedule, or other procedures to their own advantage, without the benefit of public input, the protections of the Administrative Procedure Act (APA), or review by the Office of Administrative Law (OAL). As noted above, CalPERS pushed the final cut-off for voting back during the 2002 elections after one candidate (David Miller) had

used up their campaign resources. Although this was done to comply with a court ruling, without the schedule being in regulations, the schedule, number of signatures required, and other underground requirements are certainly more open to possible abuse.

7. (Optional) Please attach any additional relevant information that will assist OAL in evaluating your petition.

On March 1, 2006 I petitioned CalPERS to amend their election code to avoid possible conflicts of interest by CalPERS staff in elections, and to change the system of board elections to assure board members will be elected by the greatest possible majority of CALPERS members using a single ballot by implementing an "instant runoff" vote counting procedure.¹²

After CalPERS rejected the petition, I submitted a petition for reconsideration on May 26, 2006¹³ and broadened my previous petition to include the need for CalPERS to address existing underground regulations concerning elections. (see letter)¹⁴ I indicated these underground regulations expose CalPERS members who sign nomination petitions to increased risk of identity theft. Additionally, they facilitate potential abuse by incumbents who can change the number of signatures required, the election schedule, or other procedures to their own advantage, without the benefit of public input, the protections of the Administrative Procedure Act (APA), or review by the Office of Administrative Law (OAL). I also indicated that "If CalPERS denies the petition for reconsideration, I will be forced to seek a determination from OAL concerning compliance by CalPERS with California Code of Regulations, title 1, section 11340.5." I included a draft petition to OAL seeking a determination on the alleged underground regulations that is substantially similar to the petition you are now reading.¹⁵

On June 23, 2006, CalPERS rejected the petition for reconsideration and indicated they would not address allegations of purported underground regulations "in its response to your request for reconsideration." During the week of July 10, 2006, I spoke with Carol McConnell, Deputy General Counsel at CalPERS and the

¹² Attachment 12, CalPERS election rules petition dated March 1, 2006. <http://perswatch.net/corr/CalPERSelectionrules-petition.pdf>

¹³ Attachment 13, petition for reconsideration, dated May 26, 2006 <http://perswatch.net/corr/pdfs/PetitionForReconsideration.pdf>

¹⁴ Attachment 14, letter to CalPERS dated May 26, 2006 <http://perswatch.net/corr/pdfs/CalPERSreconsideration-Ltr5-26-06.pdf>

¹⁵ Attachment 15, Draft Petition for Underground Regulations Determination dated May 25, 2006 <http://perswatch.net/corr/pdfs/DRAFTUCalPERSelections.pdf>

named contact in the Board's "Decision on Request for Reconsideration of Denial of Petition, California Government Code Section 11230.7." I asked Ms. McConnell if CalPERS would be providing a response to the allegations of purported underground regulations in another correspondence or if she could advise me on whether or not sending a separate letter on that specific subject, without reference to the previous petition, would elicit a response. She indicated that she did not know. She also mentioned that at its May 2006 meeting the Board's Benefits and Program Administration Committee (BPAC) indicated they would form an "ad hoc committee" to consider revising election procedures.

I testified at the referenced BPAC hearing prior to submitting my request for reconsideration. Unfortunately, the charge of the ad hoc committee was extremely vague, as was when the committee would be formed, who would participate in its deliberations, or when it would report back. It takes many months to amend regulations. Ten weeks after the vague commitment to form an ad hoc committee was made, there appears to be no such committee and no substantial progress in addressing underground regulations, other than denying my petitions. It appears likely that CalPERS will conduct its 2007 election without amending its regulations to address the underground regulations. For the reasons stated above, I believe such action is irresponsible and is in violation of the Government Code. I look forward to OAL's determination and hope that it will influence the Board of Administration to fully comply with the APA.

8. Certifications:

I certify that I have submitted a copy of this petition and all attachments to:

Name: Fred Buenrostro, CEO
 Agency: California Public Employees Retirement System (CalPERS)
 Address: P.O. Box 942707, Sacramento, CA 94229-2707
 Telephone number: 916-795-3952

I certify that all of the above information is true and correct to the best of my knowledge.

/s/ _____ July 24, 2006
 Signature of Petitioner Date

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

BUREAU OF SECURITY AND INVESTIGATIVE SERVICES

Proprietary Private Security Officers

Implements Sections 7574 through 7574.3, Business and Professions Code. Clarifies the requirements for filing an application for a proprietary private security officer registration and the requirement to submit fingerprints for a criminal history background. Establishes the registration fee for a proprietary private security guard, as well as renewal and delinquency fees. Increases the replacement fee for a lost bureau-issued identification card and baton certificate; provides that a person may work as a proprietary private security officer pending receipt of the registration card if he has been approved by the Bureau and carries the hardcopy printout of the approval with valid identification. Changes registration renewal timing from the same time each year to a cyclical period. Makes other technical and clarifying changes.

Title 16

California Code of Regulations

ADOPT: 601.5, 642.5 AMEND: 600.1, 601.3, 602, 602.1, 603, 605, 606, 607.4, 608.3, 627

Filed 08/17/06

Effective 08/17/06

Agency Contact:

Noreene DeKoning (916) 322-7530

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

Standardized Content for Electronic Weapons Courses

This rulemaking action would establish minimum curriculum requirements and minimum course duration

for POST-certified electronic weapons courses for Peace Officers.

Title 11
California Code of Regulations
ADOPT: 1084
Filed 08/16/06
Effective 09/15/06
Agency Contact: Patricia Cassidy (916) 227-4847

COMMISSION ON STATE MANDATES Article 1 Cleanup

The purpose of this rulemaking is to clarify that designees of ex officio Commission members may continue to serve on the Commission until the designation is revoked or replaced by the current constitutional officer or director. It also clarifies that an election shall be conducted as soon as practicable to fill a vacant office (chairperson or vice-chairperson) held by a public member or local elected official.

Title 2
California Code of Regulations
AMEND: 1181.4
Filed 08/23/06
Effective 08/23/06
Agency Contact: Cathy Cruz (916) 323-3562

DEPARTMENT OF FOOD AND AGRICULTURE Diaprepes Root Weevil Interior Quarantine

This emergency regulatory action will add an approximately two (2) square mile area around the Carmel Valley area of San Diego County to the areas already under quarantine in the county due to the infestation of the *Diaprepes abbreviatus* (West Indian sugarcane root borer or *Diaprepes* root weevil). Parts of Los Angeles and Orange counties, as well as other parts of San Diego, are already established as quarantine areas for this purpose. This adoption would address a newly discovered infestation in the Carmel Valley with a 1/2 mile buffer zone.

Title 3
California Code of Regulations
AMEND: 3433(b)
Filed 08/16/06
Effective 08/16/06
Agency Contact: Stephen Brown (916) 654-1017

DEPARTMENT OF FOOD AND AGRICULTURE Peach Fruit Fly Eradication Area

This is the Certificate of Compliance for 06-0518-02E which amended Title 3 section 3591.12(a) by adding Fresno County to the Peach Fruit Fly Eradication Area.

Title 3
California Code of Regulations
AMEND: 3591.12(a)
Filed 08/23/06
Effective 08/23/06
Agency Contact: Stephen Brown (916) 654-1017

DEPARTMENT OF FOOD AND AGRICULTURE Diaprepes Abbreviatus Eradication Area

This certification of former emergency regulatory action adds the County of San Diego to the eradication area for the West Indian Sugarcane root borer (WIS) (*Diaprepes Abbreviatus*). Los Angeles and Orange County are already established as eradication areas for this purpose. The regulation also establishes the means and methods that may be used to eradicate and control this pest within this area.

Seven adult root borers were found from April 28 through May 1, 2006 at one San Diego County residence. Subsequent root borers have been found in Carlsbad, La Jolla and the Carmel Valley area of San Diego County. The number of adults is indicative of an infestation. An emergency response is necessary to ensure WIS does not spread farther than the three counties now infested and become an established pest in California. The best window of opportunity to contain this pest is while the adults are in the peak emergence periods, typically from May to June and August to September. This period of time is the prime mating period. Initial indications of WIS are irregular semicircular feeding areas on the leaf edges. Additionally the adult WIS leave feeding marks on the roots and flowers of the trees.

The emergency statement explained that WIS is a significant pest which DFA is working to eradicate in California. It is a widespread pest in Florida, and has recently been detected in the Texas Rio Grande Valley. Both Florida and Texas have adopted an interior quarantine against the WIS and are conducting eradication programs. The current estimate for damages in Florida from WIS is \$70 million per year. The damage is caused when the WIS larvae infest a tree and cause it to be non-producing. Additional damage occurs when related root rot and moisture cause the trees to die off even faster. WIS can destroy an entire crop, rendering citrus growing non-profitable. The effects occur on ornamental trees and root crops, which are also subject to attack by WIS. In short, WIS poses a substantial threat to California's citrus and ornamental trees, an economy which is substantial in California.

The emergency statement also explained that each female may lay as many as 5,000 eggs during its lifetime. Eggs are generally laid in clusters, and hatch seven to ten days after they are laid. The larvae drop and burrow into the soil and start their attack on the host plants.

Once they have exhausted the food supply of the host, they move on to larger roots as necessary. WIS' larval and pupal stages vary from several months to more than a year, resulting in overlapping generations. After the feeding period, the larvae pupate the soil and later emerge as adults. The entire life cycle is six months to 15 months. The emergence of adults in San Diego County at this time clearly indicates an infestation present for at least 6 months.

Title 3

California Code of Regulations

AMEND: 3591.19(a)

Filed 08/17/06

Effective 08/17/06

Agency Contact: Stephen Brown (916) 654-1017

STATE ALLOCATION BOARD

Leroy F. Greene School Facilities Act of 1998 —

Energy Funds

The proposed rulemaking action would make the \$5.9 million available to fund modernization projects and apportion more new construction energy efficiency grants.

Title 2

California Code of Regulations

AMEND: 1859.2, 1859.70.1, 1859.71.3, 1859.78.5

Filed 08/21/06

Effective 08/21/06

Agency Contact: Robert Young (916) 445-0083

CCR CHANGES FILED

WITH THE SECRETARY OF STATE

WITHIN MARCH 22, 2006 TO

AUGUST 23, 2006

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1

03/28/06 AMEND: 1395

03/27/06 ADOPT: 250, 260, 270, 280 AMEND: 55

Title 2

08/23/06 AMEND: 1181.4

08/21/06 AMEND: 1859.2, 1859.70.1, 1859.71.3, 1859.78.5

08/15/06 ADOPT: 20108, 20108.1, 20108.12, 20108.15, 20108.18, 20108.20, 20108.25, 20108.30, 20108.35, 20108.36, 20108.37, 20108.38, 20108.40, 20108.45, 20108.50, 20108.51, 20108.55, 20108.60, 20108.65, 20108.70, 20108.75, 20108.80

08/11/06 AMEND: 1859.2, 1859.40, 1859.51, 1859.70, 1859.93.1, 1859.95, 1859.147, 1859.202, 1866

07/24/06 AMEND: 18944

07/06/06 AMEND: 575.1, 575.2

06/20/06 AMEND: 18537

06/08/06 AMEND: 18526

05/26/06 ADOPT: 18438.5 AMEND: 18438.8

05/25/06 AMEND: 18942

05/24/06 ADOPT: Div. 8, Ch. 111, Sec. 59560

05/24/06 AMEND: 433.1

05/17/06 ADOPT: 22610.1, 22610.2, 22610.3, 22610.4

05/15/06 AMEND: 1859.2, 1859.40, 1859.51, 1859.70, 1859.93.1, 1859.95, 1859.147, Form SAB 50-04

05/08/06 AMEND: 18537.1

04/24/06 AMEND: 20108.70, Division 7

04/10/06 ADOPT: 20108, 20108.1, 20108.12, 20108.15, 20108.18, 20108.20, 20108.25, 20108.30, 20108.35, 20108.36, 20108.37, 20108.38, 20108.40, 20108.45, 20108.50, 20108.51, 20108.55, 20108.60, 20108.65, 20108.70, 20108.75, 20108.80

04/04/06 ADOPT: 18215.1 AMEND: 18225.4, 18428

Title 3

08/23/06 AMEND: 3591.12(a)

08/17/06 AMEND: 3591.19(a)

08/16/06 AMEND: 3433(b)

08/15/06 AMEND: 3700(c)

08/15/06 AMEND: 3700(c)

08/10/06 AMEND: 3591.6(a)

08/01/06 AMEND: 3591.6(a)

08/01/06 AMEND: 3424(b)

07/28/06 AMEND: 3591.2(a)

07/26/06 AMEND: 3700(c)

07/21/06 REPEAL: 1366

07/19/06 ADOPT: 6310 AMEND: 6170

07/18/06 ADOPT: 6960 AMEND: 6000

07/17/06 AMEND: 3591.6(a)

07/05/06 AMEND: 3591.6

07/03/06 AMEND: 3589(a)

06/28/06 AMEND: 3433(b)

06/12/06	AMEND: 3433(b)	05/16/06	ADOPT: 51025.5
05/23/06	ADOPT: 6580, 6582, 6584	05/15/06	ADOPT: 11987, 11987.1, 11987.2, 11987.3, 11987.4, 11987.5, 11987.6, 11987.7
05/23/06	ADOPT: 3424		
05/19/06	AMEND: 3433(b)	05/12/06	AMEND: 19819, 19851
05/18/06	AMEND: 3591.12(a)	04/28/06	AMEND: 51026, 53206, 54024, 54100, 54616, 54700, 54706, 55005, 55160, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55403, 55404, 55512, 55522, 55530, 55605, 55675, 55753.5, 55753.7, 56000, 56050, 56062, 56200, 56201, 56202, 56204
05/18/06	ADOPT: 1472.7.2 AMEND: 1472, 1472.4	04/04/06	AMEND: 42920
05/11/06	AMEND: 3591.19	04/04/06	AMEND: 11704
04/28/06	AMEND: 1380.19, 1420.10		
04/27/06	AMEND: 3406(b)		
04/13/06	AMEND: 1446.4, 1454.10, 1462.10		
04/11/06	AMEND: 3700(c)		
04/11/06	AMEND: 3700(c)		
04/10/06	AMEND: 3406(b)		
03/30/06	AMEND: 3406(b)		
03/28/06	AMEND: 3406(b)		
03/23/06	ADOPT: 6310 AMEND: 6170		
Title 4		Title 8	
07/19/06	AMEND: 12358, 12359	07/31/06	AMEND: 5154.1
07/17/06	AMEND: 2240(e)	07/28/06	AMEND: Subchapter 4, Appendix B, Plate B-1-a
06/20/06	AMEND: 1472	07/27/06	ADOPT: 3395
06/01/06	AMEND: 8070(d), 8071(a)(9), 8072, 8073(c), 8074(b), 8076(c)(1)	07/19/06	ADOPT: 10004, 10005 AMEND: 10133.53, 10133.55
05/18/06	ADOPT: 12358	07/18/06	AMEND: 3270
05/05/06	AMEND: 150	06/30/06	AMEND: 9793, 9795
03/24/06	ADOPT: 10175, 10176, 10177, 10178, 10179, 10180, 10181, 10182, 10183, 10184, 10185, 10186, 10187, 10188, 10189, 10190, 10191	06/26/06	ADOPT: 6858 AMEND: 6505, 6533, 6551, 6552, 6755, 6845, 6657 REPEAL: 6846
03/23/06	ADOPT: 10302(bb), 10305(d), 10305(e), 10315(d), 10315(j), 10320(b), 10322(e), 10325(c), 10325(c)(3)(K), 10325(c)(6), 10325(c)(8), 10325(c)(12), 10325(f)(7), 10325(f)(10), 10325(g)(5)(B)(ii), 10325(g)(5)(B)(iv), 10325(g)(5)(B)(v), 10326(g)(6), 1036(g)(7)	06/06/06	AMEND: 5155
		05/25/06	AMEND: 4650
		04/19/06	AMEND: 3395
		04/17/06	AMEND: 2320.4(a)(3)
		04/11/06	ADOPT: 32613 AMEND: 32130, 32135, 32140, 32155, 32190, 32325, 32350, 32400, 32450, 32500, 32602, 32604, 32605, 32607, 32609, 32615, 32620, 32621, 32625, 32630, 32635, 32640, 32644, 32647, 32648, 32649, 32650, 32680, 32690, 32781, 32980, 33020, 40130
Title 5		04/04/06	ADOPT: 6070, 6074, 6075, 6080, 6085, 6087, 6089, 6090, 6095, 6100, 6105, 6110, 6115, 6120 REPEAL: 1200, 1204, 1205, 1210, 1215, 1216, 1217, 1220, 1225, 1230, 1240, 1250, 1270, 1280
08/15/06	AMEND: 1030.7, 1030.8	04/03/06	AMEND: 1720
07/31/06	ADOPT: 1043.2, 1043.4, 1043.6, 1043.8, 1043.10, 1047, 1048 AMEND: 1040, 1041, 1043, 1044 REPEAL: 1042, 1045, 1046	03/22/06	AMEND: 9701, 9702, 9703
07/25/06	ADOPT: 1207.1, 1207.2 AMEND: 1204.5		
07/21/06	ADOPT: 15566, 15567, 15568, 15569		
07/14/06	ADOPT: 51016.5, 55183		
06/12/06	ADOPT: 19833.5, 19833.6 AMEND: 19815, 19816, 19816.1, 19819, 19824, 19828.1, 19831	Title 9	
06/09/06	ADOPT: 19827 AMEND: 19812, 19813, 19814, 19814.1, 19815, 19816, 19817, 19817.1, 19826, 19826.1, 19836, 19851, 19853	06/07/06	ADOPT: 10056, 10057
05/25/06	AMEND: 1074	05/24/05	ADOPT: 3400
		05/19/06	ADOPT: 1810.100, 1810.110, 1810.200, 1810.201, 1810.202, 1810.203, 1810.203.5, 1810.204, 1810.205, 1810.205.1, 1810.205.2, 1810.206, 1810.207, 1810.208, 1810.209, 1810.210, 1810.211, 1810.212,

1810.213, 1810.214, 1810.214.1,
1810.215, 1810.216

04/19/06 AMEND: 10000, 10010, 10015, 10020,
10025, 10030, 10035, 10040, 10045,
10050, 10055, 10060, 10065, 10070,
10080, 10085, 10090, 10095, 10105,
10110, 10115, 10120, 10125, 10130,
10140, 10145, 10150, 10155, 10160,
10165, 10170, 10175, 10185, 10190,
10195

Title 10

08/08/06 ADOPT: 3583 AMEND: 3500, 3525,
3527, 3528, 3541, 3542, 3543, 3544,
3563, 3568, 3603, 3622, 3668, 3681,
3682, 3761 REPEAL: 3541

08/02/06 ADOPT: 2790.7

08/01/06 ADOPT: 5370, 5371, 5372, 5373, 5374,
5375, 5376, 5377

07/28/06 AMEND: 2698.52(c), 2698.53(b),
2698.56(c)

07/26/06 ADOPT: 5280, 5281, 5282, 5283, 5284,
5285, 5286

07/24/06 ADOPT: 2498.6

07/18/06 AMEND: 2498.5, 2498.6

07/14/06 AMEND: 2632.5, 2632.8, 2632.11

07/12/06 AMEND: 2498.4.9

07/12/06 ADOPT: 2190.20, 2190.22, 2190.24

07/12/06 AMEND: 2697.6

07/10/06 ADOPT: 2509.21

06/30/06 ADOPT: 2194.9, 2194.10, 2194.11,
2194.12, 2194.13, 2194.14, 2194.15,
2194.16, 2194.17

06/19/06 AMEND: 2318.6, 2353.1, 2354

06/05/06 AMEND: 3528

06/01/06 ADOPT: 2695.1(g), 2695.14 AMEND:
2695.1, 2695.2, 2695.7, 2695.8, 2695.9,
2695.10, 2695.12

05/25/06 ADOPT: 2188.23, 2188.24, 2188.83
AMEND: 2186.1, 2188.2, 2188.6,
2188.8

05/18/06 AMEND: 2498.6

04/28/06 ADOPT: 2670.1, 2670.2, 2670.3, 2670.4,
2670.5, 2670.7, 2670.8, 2670.9, 2670.10,
2670.11, 2670.12, 2670.13, 2670.14,
2670.15, 2670.17, 2670.18, 2670.19,
2670.20, 2670.21, 2670.22, 2670.23,
2670.24

04/20/06 AMEND: 2498.5

04/18/06 AMEND: 2498.4.9

04/18/06 AMEND: 2498.4.9

03/30/06 AMEND: 2698.52(c), 2698.53(b),
2698.56(c)

03/24/06 ADOPT: 2498.6

03/24/06 REPEAL: 2546, 2546.1, 2546.2, 2546.3,
2546.4, 2546.5, 2546.6, 2546.7, 2546.8

Title 11

08/16/06 ADOPT: 1084

07/27/06 AMEND: 1001, 1005, 1008, 1011, 1014,
1015, 1018, 1052, 1053, 1055, 1056,
1081 and Procedures D-1, D-2, D-10
E-1, F-1, and F-6

07/12/06 AMEND: 999.2

06/28/06 ADOPT: 4016, 4017, 4018, 4019, 4020,
4021, 4022, 4023, 4024, 4030, 4031,
4032, 4034, 4035, 4036, 4037, 4038,
4039, 4040, 4041, 4045, 4047, 4048,
4049, 4050, 4051, 4052, 4053, 4054,
4055, 4056, 4057, 4058, 4059, 4060,
4061, 4062, 4063, 4064, 4065, 4066

06/28/06 ADOPT: 4400(ll), 4400(mm), 4401.1,
4406 AMEND: 4440.3 REPEAL:
4400(l), 4406

05/23/06 AMEND: 1002(c)

05/22/06 REPEAL: 2033

05/22/06 AMEND: 968.44, 968.46

05/12/06 AMEND: 900, 901, 902, 903, 904, 905,
906, 907, 908, 909, 910

Title 12

04/10/06 AMEND: 453.1

Title 13

07/28/06 AMEND: 154.00

06/30/06 ADOPT: 85.00, 85.02, 85.04, 85.06,
85.08

06/29/06 AMEND: 345.16

06/16/06 AMEND: 2023.4

06/15/06 AMEND: 1239

05/22/06 ADOPT: 86500, 86501

05/22/06 AMEND: 425.01

05/18/06 ADOPT: 550.20 AMEND: 551.11,
551.12

05/02/06 ADOPT: 345.07 AMEND: 345.06

04/04/06 AMEND: 423.00

03/24/06 AMEND: 156.00

03/24/06 AMEND: 590

Title 14

08/11/06 AMEND: 7.50

08/11/06 AMEND: 1261

08/04/06 ADOPT: 701, 702 AMEND: 1.74, 27.15,
27.67, 478.1, 551, 601, 708

07/31/06 ADOPT: 4970.49, 4970.50, 4970.51,
4970.52, 4970.53, 4970.54, 4970.55,
4970.56, 4970.57, 4970.58, 4970.59,
4970.60, 4970.61, 4970.62, 4970.63,
4970.64, 4970.65, 4970.66, 4970.67,

4970.68, 4970.69, 4970.70, 4970.71, 4970.72

07/31/06 ADOPT: 4970, 4970.02, 4970.03, 4970.04, 4970.05, 4970.06, 4970.07, 4970.08, 4970.09, 4970.10, 4970.11, 4970.12, 4970.13, 4970.14, 4970.15, 4970.16, 4970.17, 4970.18, 4970.19, 4970.20, 4970.21 AMEND: 4970.00, 4970.01 REPEAL: 4970.02, 4970.03, 4970.04

07/28/06 AMEND: 15411

07/28/06 ADOPT: 7.50(b)(178)

07/19/06 ADOPT: 18459.1.2, Forms CIWMB 203, 204 AMEND: 18449, 18450, 18451, 18453.2, 18456, 18456.2.1, 18459, 18459.1, 18459.2.1, 18459.3, 18460.1, 18460.1.1, 18460.2, 18460.2.1, 18461, 18462, 18463, 18464, 18466, Penalty Tables 1, 11

07/12/06 AMEND: 507.1

07/11/06 ADOPT: 1723(g) AMEND: 1722(j), 1722, 1722.1, 1722.1.1, 1723(a), 1723.1(c), 1723.1(d), 1723.5, 1723.7(d)(2)(f), 1723.8

07/11/06 AMEND: 15251

06/30/06 AMEND: 360, 361, 362, 363, 364

06/30/06 AMEND: 11900

06/29/06 AMEND: 851.23

06/23/06 AMEND: 1220

06/16/06 AMEND: 895, 895.1, 1038, 1038(f)

06/08/06 AMEND: 746

06/05/06 AMEND: 791.7, Form FG OSPR-1972

05/26/06 AMEND: 670.2

05/23/06 AMEND: 401

05/17/06 AMEND: 182

05/11/06 AMEND: 27.80

05/08/06 ADOPT: 1299

04/21/06 AMEND: 27.60, 28.59

04/17/06 AMEND: 791.7, 793, 795

04/11/06 AMEND: 18454, 18456, 18456.3, CIWMB form 60

04/10/06 AMEND: 630

04/03/06 ADOPT: 4970, 4970.02, 4970.03, 4970.04, 4970.05, 4970.06, 4970.07, 4970.08, 4970.09, 4970.10, 4970.11, 4970.12, 4970.13, 4970.14, 4970.15, 4970.16, 4970.17, 4970.18, 4970.19, 4970.20, 4970.21 AMEND: 4970.00, 4970.01 REPEAL: 4970.02, 4970.03, 4970.04

04/03/06 ADOPT: 4970.49, 4970.50, 4970.51, 4970.52, 4970.53, 4970.54, 4970.55, 4970.56, 4970.57, 4970.58, 4970.59, 4970.60, 4970.61, 4970.62, 4970.63, 4970.64, 4970.65, 4970.66, 4970.67,

4970.68, 4970.69, 4970.70, 4970.71, 4970.72

03/28/06 AMEND: 187

03/27/06 AMEND: 163.1

03/22/06 AMEND: 119, Appendix A

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07/27/06 ADOPT: 69200, 69201, 69202, 69203, 69204, 69205, 69206, 69207, 69208, 69209, 69210, 69211, 69212, 69213, 69214 REPEAL: 19030, 19031, 19032, 19033, 19034, 19035, 19036, 19037, 19038, 19039, 19040, 19041, 19042, 19043, 19044

Title 15

08/11/06 ADOPT: 4034.0, 4034.1, 4034.2, 4034.3, 4034.4 REPEAL: 4036.0, 4040.0

07/27/06 AMEND: 3000, 3062, 3075, 3210

07/12/06 AMEND: 7001 REPEAL: 2005, 3416, 4020

06/27/06 AMEND: 3341.5

06/09/06 ADOPT: 3040.2 AMEND: 3000, 3040, 3041, 3043, 3043.3, 3043.4, 3043.5, 3043.6, 3044, 3045, 3045.1, 3045.2, 3045.3, 3075

06/06/06 AMEND: 3173.1

05/25/06 AMEND: 3040.1, 3341.5, 3375, 3375.3, 3378

05/22/06 ADOPT: 3043.7 AMEND: 3043.1, 3327, 3328

05/16/06 AMEND: 3999.1.10, 3999.1.8

05/16/06 AMEND: 3999.2

05/01/06 AMEND: 2510, 2511, 2512, 2513

04/24/06 ADOPT: 3054.1, 3054.2, 3054.3, 3054.4, 3054.5, 3054.6 AMEND: 3050, 3051, 3052, 3053, 3054

03/27/06 AMEND: 3176.3

Title 16

08/17/06 ADOPT: 601.5, 642.5 AMEND: 600.1, 601.3, 602, 602.1, 603, 605, 606, 607.4, 608.3, 627

08/10/06 REPEAL: 829

08/04/06 AMEND: 1886.40

08/01/06 ADOPT: 1399.180, 1399.181, 1399.182, 1399.183, 1399.184, 1399.185, 1399.186, 1399.187

07/31/06 AMEND: 3394.4, 3394.6

07/12/06 ADOPT: 1034.1 AMEND: 1021, 1028, 1034

07/03/06 AMEND: 1399.152, 1399.156.4

06/26/06 ADOPT: 1304.5

06/14/06 AMEND: 2537, 2537.1

06/05/06 AMEND: 3303

06/05/06 ADOPT: 2608

06/05/06 AMEND: 2630, 2630.1

06/01/06	ADOPT: 137	64464.6, 64465, 64466, 64467, 64467.5,
05/31/06	ADOPT: 869.9 AMEND: 868, 869	64468.1, 64468.2, 64468.3, 64468.4,
05/30/06	AMEND: 3340.1, 3340.16, 3340.16.5, 3340.17, 3340.41 REPEAL: 3340.16.6	07/24/06 ADOPT: 97900, 97901, 97902, 97910, 97911, 97912, 97913, 97914, 97915, 97916, 97917, 97920, 97921, 97922, 97923, 97924, 97925, 97926, 97927
05/22/06	AMEND: 152	07/20/06 ADOPT: 68400.11, 68400.12, 68400.13, 68400.14, 68400.15, 68400.16, Appendix I AMEND: 67450.7
05/12/06	AMEND: 1388, 1388.6, 1389, 1392	06/12/06 AMEND: 51215.6, 51321, 51323, 51535.1, 51542, 51546 REPEAL: 51124.1, 51215.4, 51335.1, 51511.3
05/01/06	AMEND: 8.1, 12, 12.5, 21, 69	06/05/06 ADOPT: 66260.201 AMEND: 66260.10, 66261.9, 66273.1, 66273.3, 66273.6, 66273.8, 66273.9, 66273.12, 66273.13, 66273.14, 66273.20, 66273.32, 66273.33, 66273.34, 66273.40, 66273.51, 66273.53, 66273.56, 66273.82, 66273.83, 66273.90, Appendix X to Chapter 11
04/17/06	AMEND: 3353	05/19/06 AMEND: 12805
04/17/06	AMEND: 1399.465	05/18/06 ADOPT: 64400.38, 64400.40, 64400.45, 64400.47, 64400.67, 64401.65, 64401.82, 64401.92, 64468.5, 64530, 64531, 64533, 64533.5, 64534, 64534.2, 64534.4, 64534.6, 64534.8, 64535, 64535.2, 64535.4, 64536, 64536.2, 64536.4, 64536.6, 64537, 64537.2, 64537.4
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